LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
APPELLANT,

vs.

PANOMA CORPORATION AND THE CORPORATION
COMMISSION OF THE STATE OF OKLAHOMA

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED JULY 6, 1954
PROBABLE JURISDICTION NOTED NOVEMBER 8, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
APPELLANT,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Oklahoma	1	1
Petition in error	1	1
Record of testimony and proceedings before the Corporation Commission of the State of Oklahoma	2	10
Appearances	5	10
Application of the Panoma Corporation	7	11
Order setting cause for hearing	11	12
Notice of hearing	14	13
Order continuing cause	18	14
Application of Natural Gas Pipeline Company of America	21	15
Response of Natural Gas Pipeline Company of America	25	16
Transcript of testimony	37	23
Appearances	37	23
Offers in evidence	38	23

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 2, 1954

—8832

	Original	Print
Record of testimony and proceedings before the Corporation Commission of the State of Oklahoma—Continued		
Transcript of testimony—Continued		
Testimony of Don Harrington	39	24
R. D. Palmer (omitted per stipulation)	87	
Hughes Seawald (omitted per stipulation)	89	
Leon L. Hoyt	91	52
W. F. Matheny	103	59
T. MacDonald Biddison	117	67
Report of the Commission	143	81
Notice of appeal and request for preparation of record, etc.	154	87
Application for supersedeas bond	157	88
Note re bond	158	89
Order fixing supersedeas bond	160	89
Supersedeas bond	164	91
Exhibits 1 to 6 (omitted per stipulation)	173	
Note re exhibit 7	184	95
Exhibit 8—Revised Receivable—Natural Gas Pipe Line Company under Oklahoma Corporation Commission Price Orders	185	96
Exhibit 9—Gas Purchase Contract between Natural Gas Pipe Line Company of America and Harrington & Marsh, dated as of December 1, 1946	186	98
Exhibit 10—Photograph	211	126
Exhibit 11—Sketch showing relationship of Natural's Station No. 1 and Panoma's Hooker Plant	212	126
Exhibit 12—Report of the Corporation Commission of Oklahoma in the case of Peerless Oil and Gas Company v. Cities Service Gas Co., et al. (December 9, 1946)	213	127
Exhibit 13—(Omitted per stipulation)	227	
Exhibit 14—Condensed analysis of actual and projected earnings of Panoma Corporation—Oklahoma Operations—from October 1, 1948 to December 31, 1950, inclusive	233	135
Exhibit 15—Report of Corporation Commission of Oklahoma in the case of Peerless Oil and Gas Co. v. Cities Service Co., et al. (February 4, 1947)	240	139
Exhibit 16—Statistics re Panoma Corporation—Cost of service, gathering and treating year 1941—Estimate of Investment for earnings analysis, 1948, 1949, 1950—Estimate of Working capital—Estimate of depreciation reserve accrual and revenue requirement, 1948, 1949, 1950	247	145
Chairman's certificate (omitted in printing)	251	
Opinon, Welch, J.	253	149
Dissenting opinion, Halley, C. J.	266	164

	Original	Print
Petition for rehearing and supporting brief	273	169
Order denying petition for rehearing	279	173
Order denying leave to file second rehearing	280	173
Petition for appeal	281	174
Order allowing appeal	282	174
Bond on appeal (omitted in printing)	351	
Citation (omitted in printing)	353	
Assignment of errors and prayer for reversal	354	176
Application for stay of enforcement of opinion and judgment	359	179
Order staying enforcement of order, opinion and judgment	361	180
Praecipe	375	181
Clerk's certificate (omitted in printing)	378	
Order noting probable jurisdiction	379	183

[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF STATE OF OKLAHOMA

No. 35203

NATURAL GAS PIPE LINE COMPANY OF AMERICA, Plaintiff in Error,

v.

PANOMA CORPORATION and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Defendants in Error

(In the Matter of the Application of Panoma Corporation for a Clarification of Order No. 19514 and for an Order of this Commission Directing the Action to be taken by Applicant and Natural Gas Pipe Line Company of America under and Pursuant to said Order—Cause CD No. 3048, Before the Corporation Commission of the State of Oklahoma.)

PETITION IN ERROR—Filed July 11, 1951

Comes now Natural Gas Pipe Line Company of America, (respondent below) hereinafter referred to as Natural, Plaintiff in Error, and complaining of Panoma Corporation (applicant below) hereinafter referred to as Panoma, and the Corporation Commission of the State of Oklahoma (hereinafter referred to as the Commission), Defendants in Error, shows that on the 17th day of May, [fol. 2] 1951, the Commission, in a proceeding designated as Cause CD No. 3048, made and entered an order, being No. 24,745, in which Natural was granted 20 days to pay the difference between the amount which it had paid to Panoma for residue gas under the terms of a gas purchase contract and an amount computed by multiplying the volume of gas, the custody of which was delivered to Natural by Panoma for compression, by 7 cents per thousand cubic feet. By said order Panoma was directed, upon the failure of Natural to make such payment within 20 days, to forthwith cease delivering gas to Natural under said contract. Said order further provided

that Natural, by paying to Panoma 6 cents per thousand cubic feet for residue gas delivered to Natural under said contract, did not comply with Order No. 19,514 of the Commission. Natural was further ordered to pay to Panoma 7 cents per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch for the gas delivered to Natural's compressor station. This portion of the order assumes and infers that such delivery constituted a disposition of such gas by Panoma to Natural. Such assumption and inference is contrary to the undisputed evidence which shows that (a) such delivery was a temporary delivery only of custody of such gas; (b) title to the gas remains in Panoma during the brief period of such custody; and (c) the natural gas so [fol. 3] delivered into the brief custody of Natural (for compression purposes only) was different, both as to quantity and quality, from the residue gas which was and is later metered, sold and delivered by Panoma to Natural.

Thereafter and within the time allowed by law, Natural gave notice of appeal from said order, superseded the same, and now files herewith a complete transcript of the record of the proceedings had before the Commission and of the evidence upon which Order No. 24,745 was based, including a copy of said order, which said transcript is hereto attached, marked Exhibit "A", and made a part of this petition in error.

Natural, which is not a producer of natural gas in Oklahoma, and purchases no natural gas (gas as produced from the wells) in Oklahoma, its only activity in said state being the purchase from Panoma of substantial quantities of residue gas (being a portion of the constituents of the natural gas produced by Panoma from its wells) and the transportation thereof through and from the State of Oklahoma in interstate commerce, alleges that there is error in said proceedings, order and judgment in this, to-wit:

1

The Commission was without power or jurisdiction to make and enter the order complained of.

2

Order No. 24,745 is contrary to law.

[fol. 4] 3

Order No. 24,745 is contrary to the evidence, and is not sustained by substantial evidence.

4

The evidence conclusively shows that neither Panoma nor Natural, in carrying out the provisions of a contract between them, has violated the Commissions' Order No. 19,514 entered in Cause CD No. 1054 alone or as said order was construed and interpreted by the Commission in Order No. 19,702 entered in Cause CD No. 1054. The contrary findings by the Commission are inadequate in law and insufficient upon which to base such order.

5

Order No. 24,745 unreasonably discriminates against Natural by applying to it a rule different than that announced in Order No. 19,514.

6

Order No. 24,745 is void and beyond the power of the Commission in that it is an attempt, under the guise of enforcing prior orders, to alter and change in this case its prior legislative Order No. 19,514 alone or as construed by Order No. 19,702 without new legislative process.

7

Order No. 24,745 unreasonably discriminates against Natural by applying to it a rule different than that an-
[fol. 5] nounced in Order No. 19,702, and at the same time affirming and adhering to said rule as a correct interpretation of Order No. 19,514.

8

Order No. 24,745 is in conflict with the terms and meaning of Order No. 19,514 as construed and interpreted by Order No. 19,702 (issued in the same proceeding in which

Order No. 19,514 was issued) in that (a) in Order No. 19,702 it was held that a sale by Phillips to Panhandle Eastern Pipe Line Company of residue gas at 4.67 cents per M.C.F. (measured at 16.4 pounds, which is equivalent to 4.17 cents per M.C.F. when measured at 14.65 pounds) was not in violation of the terms and meaning of Order No. 19,514. In the instant case it is held that a purchase by Natural from Panoma of residue gas at 5.12 cents per M.C.F. (a realization of 22 per cent in excess of the price paid by Panhandle Eastern to Phillips) was a violation of such order. (b) In Order No. 19,702 it was held that Phillips, by selling its residue gas at 4.67 cents per M.C.F. and its extracted liquids for a sum not to exceed 3.15 cents per M.C.F., thus realizing a total of 6.9855 cents per M.C.F. measured at 14.65 pounds, was realizing from the sale and utilization of the constituents of the gas produced by it approximately the equivalent of 7 cents per M.C.F., and that therefore Phillips was complying with Order No. 19,514 as therein construed and interpreted. In [fol. 6] the instant case it is held that Panoma, though selling its residue gas to Natural at 5.12 cents per M.C.F. (measured at 14.65 pounds) and its extracted liquids for 4.181 cents per M.C.F., thus realizing from such constituents 9.301 cents per M.C.F. (a realization of 33 per cent in excess of that of Phillips) is not complying with the terms and meaning of Order No. 19,514.

9

Order No. 24,745, in so far as it directs Natural to pay to Panoma 7 cents per M.C.F. for the gas delivered into Natural's custody at Natural's compressor plant, is arbitrary, unreasonable and void in that (a) thereby Natural is required to pay for portions of the gas over which it does not obtain dominion, title or power of disposition, namely, the extractable liquid hydrocarbons which are extracted from such gas after it is redelivered to Panoma and are sold by Panoma for large sums of money; (b) its effect is to enable Panoma to collect twice for the extractable liquid hydrocarbons contained in the natural gas, once from Natural through the requirement that Natural pay the full value of the natural gas which is

delivered into its custody at its compressor station, and again from those purchasers to whom Panoma sells such extracted liquid hydrocarbons.

10

Order No. 24,745 violates the Fourteenth Amendment to the Constitution of the United States in that it denies to Natural equal protection of the law.

[fol. 7] 11

Order No. 24,745 impairs the obligations of the contract between Panoma and Natural in violation of Section 10, Article 1 of the Constitution of the United States and Section 15, Article 2 of the Constitution of the State of Oklahoma.

12

Order No. 24,745 deprives Natural of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States and of Section 7, Article 2 of the Constitution of the State of Oklahoma.

13

Order No. 24,745, *by* directed Natural to pay to Panoma for residue gas (a lawful article of commerce) the price fixed for natural gas from which no constituents have been extracted, amounts to regulation of and the imposition of a burden upon interstate commerce, in violation of Section 8, Article 1 of the Constitution of the United States.

14

Order No. 24,745 constitutes an attempt on the part of the Commission, by the imposition of sanctions, (the payment by Natural to Panoma of $1,334,960.50) to exercise judicial power and jurisdiction not conferred on the Commission by any constitutional or statutory provision or by necessary implication.

[fol. 8] 15

Order No. 24,745 constitutes an unwarranted invasion of the corporate affairs of both Panoma and Natural, and amounts to the substitution of the judgment of the Commission for that of the officers and directors of said corporations without authority of law.

16

Order No. 24,745 is an attempt by the Corporation Commission, under the guise of regulation by virtue of the police power, to unreasonably interfere with the contract rights of the parties, despite the fact that they have no tendency to injure the public health, morals, safety, or general welfare.

17

The Corporation Commission has no power to specify the methods or means by which a producer of gas in the affected area obtains the minimum price fixed by Order No. 19,514, particularly in view of the interpretation and construction thereof by said Commission in Order No. 19,702.

18

The application filed before the Commission by Panoma was insufficient to sustain the order complained of, and the Commission therefore erred in refusing to dismiss the same.

19

Order No. 19,514 operates solely upon the producers of gas in the affected area, and neither said order nor any constitutional or statutory provision authorizes the Cor- [fol. 9] poration Commission to render a judgment for the payment of money (by the imposition of sanctions, or otherwise) and the attempt of the Commission, by the order complained of, to force the payment of money by Natural to Panoma is clearly beyond the power and jurisdiction of the Commission.

20

Order No. 24,745, in so far as it requires Natural, as a condition to the further delivery of gas to it by Panoma,

to pay to Panoma a sum amounting to $1,.34,960.50 is arbitrary and void, for the reason that the Commission has no power to punish Natural for any prior production of gas by Panoma in alleged violation of orders of the Commission, and for the further reason that any claim by Panoma against Natural for any sums allegedly due because of any transaction between the parties prior to the date of said order, or because of any alleged prior violation by Panoma of an order of the Commission, should be asserted only in a court of competent jurisdiction, where Natural can present defenses of accord and satisfaction, estoppel and other appropriate legal and equitable defenses.

21

The contract between the parties provides that the price therein specified for residue gas shall adjust to valid regulations. Consequently, the contract itself affords an adequate remedy at law as to purchases made by Natural, both prior and subsequent to the date of Order No. 24,745. The [fol. 10] attempt by the Commission to deprive Natural of its "day in Court" is therefore wholly void and beyond the power of the Commission.

22

Order No. 24,745, under the guise of interpretation, constitutes a complete departure from the Commission's prior legislative Orders No. 19,514 and 19,702, and in so far as it attempts to impose penalties and sanctions upon Natural in an effort to force an adjustment retroactively is void because violative of Section 15 of Article 2 of the Constitution of the State of Oklahoma forbidding any ex post facto law.

23

There is no evidence which shows, nor has the Commission found, that by requiring Natural to pay more for residue gas purchased by it than is paid by other purchasers of residue gas derived from Natural gas produced in the Guymon-Hugoton Field waste will be prevented nor will corelative rights be accommodated or protested.

Wherefore, Natural prays that Order No. 24,745 of the Corporation Commission be reversed, set aside and held for naught, and that Natural be restored to all the rights and privileges it has lost by the rendition and entry of such order, and that it have such other and further relief to which it is entitled.

Warren Spies, D. H. Culton, Monnet, Hayes and Bullis, By Coleman Hayes, Attorneys for Plaintiff in Error.

[fol. 11] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

Notice of Filing of Petition in Error

To: Mac Q. Williamson, Attorney General of the State of Oklahoma.

T. Murray Robinson, Attorney for Panoma Corporation.
Kent Shartel, Attorney for Panoma Corporation.
Floyd Green, Conservation Attorney for the Corporation Commission of Oklahoma.

[fol. 12] You, and each of you, will take notice that on the 11th day of July, 1951, Natural Gas Pipe Line Company of America will file in the Supreme Court of the State of Oklahoma Petition in Error, a copy of which is herewith enclosed, together with the original certified transcript of the record of proceedings before the Corporation Commission.

Natural Gas Pipe Line Company of America, by Coleman Hayes, one of its attorneys.

[fol. 13] AFFIDAVIT OF MAILING

STATE OF OKLAHOMA,
Oklahoma County, ss:

Coleman Hayes, of lawful age, being first duly sworn, says: That he is one of the attorneys for Natural Gas Pipe Line Company of America, named as plaintiff in error in the attached Petition in Error; that on the 11th day of July, 1951, he mailed a copy of said Petition in Error, together with a notice of the filing thereof, to each of the following:

Mac Q. Williamson, Attorney General of the State of Oklahoma
T. Murray Robinson, Attorney for Panoma Corporation
Kent Shartel, Attorney for Panoma Corporation
Floyd Green, Conservation Attorney for the Corporation Commission of Oklahoma.

with postage prepaid, addressed to the persons so named at their correct place of address, said persons being the attorneys of record before the Corporation Commission and of all the parties who appeared before said Commission and entitled to a copy of said Petition in error and to notice of the filing thereof.

Further affiant saith not.

Coleman Hayes.

Subscribed and sworn to before me this 11 day of July, 1951.

Mary J. Duckett, Notary Public. My Commission Expires: March 25, 1953. (Seal)

[fols. 1-4] Proceedings Before the Corporation Commission of the State of Oklahoma

Cause CD No. 3048

In the Matter of the Application of Panoma Corporation for a Clarification of Order No. 19514 and for an Order of This Commission Directing the Action to Be Taken by Applicant and Natural Gas Pipeline Company of America Under and Pursuant to Said Order.

Record of Testimony and Proceedings Had on Appeal to the Supreme Court of the State of Oklahoma

Reporters: Rita F. Moore and J. L. King.

[fols. 5-6] Before the Corporation Commission of the State of Oklahoma

Cause CD No. 3048

In the Matter of the Application of Panoma Corporation for a Clarification of Order No. 19514 and for an Order of This Commission Directing the Action to Be Taken by Applicant and Natural Gas Pipeline Company of America Under and Pursuant to Said Order.

Appearances:

The Applicant appeared by T. Murray Robinson, and Wallace H. Robertson.

The Natural Gas Pipe Line Company of America appeared by Coleman Hayes, D. H. Culton, and Warren Spies.

The Corporation Commission appeared by Floyd H. Green.

[fol. 7] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION—Filed January 30, 1951

Comes now the applicant and alleges:

1. That it is the owner of oil and gas leases within the Guymon-Hugoton field in Texas County, Oklahoma, on which it has drilled a number of wells, through which it is producing gas from the common source of supply covered by the Commission's Order No. 19514, fixing a field price therefore, and as a producer, collects and gathers gas from its leases and wells in said field, and sells and delivers said gas to Natural Gas Pipeline Company of America in said field in Texas County, Oklahoma.

2. That under the terms of said order, all gas produced from said field shall be sold at a price of not less than seven cents per thousand cubic feet, metered at 14.65 absolute pressure per square inch; that said Order is applicable to all of said gas produced, sold and [fol. 8] delivered by Applicant as aforesaid.

3. That the Natural Gas Pipeline Company of America, since the effective date of said Order, entered on the 9th day of December, 1946, has continued to purchase gas from applicant and has paid therefor a sum less than the price fixed by the Commission's Order.

4. That applicant has made demand on the Natural Gas Pipeline Company of America to pay the purchase price provided by said Order, and notwithstanding the fact that said Order is applicable to said gas, it has refused to do so.

5. That applicant herein does not desire to continue to deliver gas in violation of said order and, therefore, requests that this Commission determine; first, whether or not its deliveries are a violation of said order; and second, whether or not it should discontinue such deliveries if such deliveries are in violation of said order.

Wherefore, applicant prays:

1. That a day be assigned for hearing this application;
2. That notice thereof be given as required by law;

3. That, upon said hearing, the Commission determine [fols. 9-10] the issues herein presented and issue an appropriate order in respect thereto.

Dated January 29, 1951.

Robinson, Shipp, Robertson & Barnes, by (S.) T. Murray Robinson, Attorneys for Applicant.

[File endorsement omitted.]

[fol. 11] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Order Setting Cause for Hearing—January 30, 1951

Now, on this the 30th day of January, 1951, the Corporation Commission of Oklahoma being in executive session, there comes on for consideration the above styled and numbered application.

It appears that this is a matter that should be set for hearing as soon as possible and that February 14th 1951 is the first available date on the calendar.

Order

It is therefore order- that this cause be and the same is hereby set for hearing in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, at 10 o'clock a.m., and that notice thereof be published as required by law.

[fols. 12-13] Done and performed this 30th day of January, 1951.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Ray C. Jones, Commissioner.

Attest: (JB) (S.) Tom McMurray, Secretary (Seal).

[File endorsement omitted.]

[fol. 14] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF HEARING—January 30, 1951

To Natural Gas Pipeline Company of America, a Delaware Corporation, and to all operators, purchasers and takers of gas, and all other interested parties, particularly in the Guymon-Hugoton Field, Texas County, Oklahoma.

Notice is hereby given that the Corporation Commission of Oklahoma will hold a hearing in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, at 10:00 o'clock A.M., upon the application of the Panoma Corporation, a Delaware corporation, filed in this cause on the 30th day of January, 1951.

Notice is further given that the applicant, Panoma Corporation, requests the Corporation Commission to determine whether its Order No. 19514, fixing a price applicable to deliveries by producers to purchasers of gas [fol. 15] produced from the Guymon-Hugoton field, applies to the gas deliveries which Panoma Corporation has been making to the Natural Gas Pipeline Company of America, and if so, whether or not Natural Gas Pipeline Company of America's failure to pay the prescribed price to Panoma Corporation makes the deliveries of gas in violation of said order.

Notice is further given that applicant further requests the Commission to determine whether or not its deliveries of gas to Natural Gas Pipeline Company of America should continue if such deliveries are in violation of the order and that applicant has prayed that the Commission determine the issues presented by its application and issue an appropriate order in respect thereto.

All persons interested in such matters may appear on said date and be heard.

Done and performed this 30th day of January, 1951.

Corporation Commission of Oklahoma, by (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: (JB) (S.) Tom McMurray, Secretary (Seal).

[fols. 16-17] [File endorsement omitted]

[fol. 18] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—February 15, 1951

This cause came on for hearing before the Corporation Commission of Oklahoma on the 14th day of February, 1951, at 10 o'clock a.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioners, sitting.

When the case was called, it was announced by T. Murray Robinson, attorney for the applicant, that the cause might be continued until April 5th and 6th, 1951, at 10 o'clock a.m. by agreement of counsel.

Order

It is therefore ordered by the Corporation Commission that the above styled cause be and the same is hereby continued until April 5th and 6th, 1951.

[fols. 19-20] Done and performed this 15th day of February, 1951.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Ray C. Jones, Commissioner.

[File endorsement omitted.]

[fol. 21] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION OF NATURAL GAS PIPELINE COMPANY OF AMERICA—Filed March 13, 1951

Comes now Natural Gas Pipeline Company of America, hereinafter referred to as Natural, and shows to the Commission:

1

That Natural is interested in the above proceeding, as will appear from the original application filed herein by Panoma Corporation.

2

That this matter is set for hearing before the Commission on April 5, 1951, and at said hearing Natural wishes to offer evidence to establish the fact that Panoma Corporation realizes from the unitization and sale of natural gas produced by it in the Guymon-Hugoton Field a price which equals or exceeds the minimum price heretofore set by the Commission.

[fol. 22]

3

To the best of Natural's information and belief, the books and records of Panoma Corporation are kept at Amarillo, Texas.

4

An examination and audit of the books and records of Panoma Corporation is necessary in order to determine whether Panoma Corporation is realizing from the utilization and sale of natural gas produced by it in said field a price which equals or exceeds the minimum price fixed by this Commission.

Wherefore, Natural prays,

(1) That a day be assigned for hearing this application;

(2) That upon a hearing hereof the Commission designate a qualified accountant, preferably one employed by the Commission, and direct such accountant to immedi-

ately examine and audit the accounts and records of Panoma Corporation for the purpose of determining whether Panoma Corporation realizes from the utilization and sale of natural gas produced by it in said field a price which equals or exceeds the minimum price fixed by this [fols. 23-24] Commission; or

(3) That the Commission make and enter an order herein authorizing Natural to take the depositions of persons having the care and custody of the accounts and records of Panoma Corporation for the purpose specified in the last preceding paragraph.

Dated March 13, 1951.

S. A. L. Morgan, Warren Spies, D. H. Culton, Monnet, Hayes, Brown & Bullis, by (S.) Coleman Hayes, Attorneys for Natural Gas Pipeline Company of America.

Proof of Service

I, Coleman Hayes, one of the attorneys for Natural Gas Pipeline Corporation of America, certify that I mailed a copy of the above and foregoing application to T. Murray Robinson, attorney for Panoma Corporation, on March 13, 1951.

(S.) Coleman Hayes.

[File endorsement omitted.]

[fol. 25] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Response of Natural Gas Pipeline Company of America—Filed March 27, 1951

1

Comes now Natural Gas Pipeline Company of America (Natural), a party to the above styled proceeding, and in response to the application herein respectfully shows:

Natural is a natural gas company within the meaning of the Natural Gas Act of 1938 and amendments thereto.

It owns and operates under certificates of public convenience and necessity a natural gas pipeline transmission system extending northeasterly from a point near Gray, Oklahoma, through which it transports and sells large quantities of gas to consuming markets in Iowa, Nebraska, Illinois and Indiana, including the Chicago Metropolitan area. Such system includes a lateral extending from its No. 1 compressor station in the Guymon-Hugoton [fol. 26] field to a point on the main line, about 22 miles northeast of Gray, Oklahoma. The markets so supplied rely solely on Natural for gas for residential, commercial and industrial use. The quantities of gas so transported and sold aggregate 183.8 billion cubic feet annually, averaging 503.6 million cubic feet daily, measured at a pressure base of 14.65 lbs. per square inch.

2

The gas so transported and sold by Natural is not natural gas as produced from the wells. It is only a constituent of such natural gas, being what is known as dehydrated residue gas,—the hydrocarbons remaining in gaseous form after the natural gas produced from the wells has been processed by and through an extraction plant and the hydrocarbons therein contained, commercially usable in liquid form, have been extracted as liquids, and after the moisture content of such residue gas has been reduced by the use of dehy-ration facilities. Natural has not transported, and cannot safely, economically and efficiently transport, through its pipeline transportation system, natural gas as produced from the wells in the areas from which it obtains its supplies of gas because of the [fol. 27] presence of such hydrocarbons commercially extractable in liquid form. Such hydrocarbons must be removed and the moisture content of the residue reduced before the gas transported enters Natural's long distance pipeline operated at high pressures.

3

On December 1, 1946, Natural as purchaser entered into a written contract with D. D. Harrington, Stanley Marsh,

Jr., Estelle Farris Marsh, T. J. Wagner, Jr., Ida D. Marsh, Isobel Marsh McCormick and husband, Jas. L. McCormick, and Stanley Marsh, Jr., Independent Executor of the Estate of Stanley Marsh, deceased, all of whom were partners doing business under the firm name of Harrington & Marsh, as sellers. Such firm later assigned such contract to applicant herein. Under such contract:

(a) Sellers agreed to sell to buyer a daily average of 76,000,000 cubic feet of dehydrated residue gas, as generally described in numerical paragraph 2 above.

(b) Sellers agreed to drill on certain acreage in the Guymon-Hugoton field on which they held leases such a number of wells as would enable sellers to deliver to buyer the daily volumes of gas required by the contract, to [fol. 28] produce such gas, and to construct such gathering lines as would enable sellers to deliver the natural gas produced from such wells to the inlet of buyer's compressor station No. 1.

(c) Sellers also agreed to construct a gasoline plant and dehydration plant connecting with the discharge side of buyer's compressor plant and so operate such plant as to remove from the raw gas as produced from the wells all hydrocarbons and water necessary to produce a dew point of the gas then to be delivered to Natural at the inlet of Natural's pipeline at the discharge side of such extraction plant, which should not exceed a temperature of 25 degrees Fahrenheit at a gauge pressure of not more than 785 pounds per square inch, in order—the formation of hydrates and/or the condensation of hydrocarbons would not occur in Natural's pipeline system.

(d) Sellers were authorized at such plant to extract from the raw gas entering such plant nitrogen, helium and also natural gasoline, butane, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents; but sellers were not authorized by such operations to reduce the heating value [fol. 29] of the hydrocarbons remaining in gaseous form below 950 British thermal units per cubic foot.

(e) If sellers should fail to operate their said gasoline and dehydration plants in accordance with such agreement, buyer was authorized to take possession thereof,

and operate the same for the account of sellers, marketing or otherwise disposing of all products therefrom and accounting to sellers for the receipts therefrom until such a time as it should receive assurance from sellers that such plants would thereafter be operated as provided in such contract.

(f) Natural agreed to pay for such residue gas as should be delivered into its pipeline at the discharge of such extraction and dehydration plant the sum of 6¢ per thousand cubic feet until July 1, 1951, 7¢ per thousand cubic feet for a five-year period commencing on July 1, 1951, and 8¢ per thousand cubic feet for the remainder of the contract term; all volumes to be measured at a base temperature of 60 degrees Fahrenheit and at an absolute pressure of 16.4 lbs. per square inch. Such contract also provided for certain increases and decreases in such prices [fol. 30] in accordance with the heating value of the gas delivered from such plant of sellers into Natural's pipeline.

4

It was recognized by the parties that the pressure of the gas at the end of sellers' gathering system would be substantially below the pressure of the gas at the wells, far below the pressure at which the extractable hydrocarbons could be most economically removed by sellers, and far below the pressure required to enable Natural to take the residue gas into its pipeline for transportation. Since it was necessary that Natural construct a compressor station by which to increase the pressure of the gas purchased to the point where the gas could enter Natural's pipeline for transportation, the parties agreed that Natural's compressor station would be constructed at the suction side of sellers' extraction plant, thus providing the increase in pressure required by sellers for economical and efficient recovery of liquids in its extraction plant, and in order that the pressure of the residue gas at the discharge of such plant into Natural's pipeline would be adequate for Natural's transportation requirements. They also agreed that all hydrocarbons removed from such gas in the process of such compression by Natural should [fol. 31] be the property of sellers.

Thus, the compression of such gas by Natural was for the mutual benefit of sellers and buyers, and Natural's compressor station was placed at the suction side rather than the discharge side of sellers' extraction plant wholly for the economic interest of sellers in the extraction of liquids from the natural gas.

5

Under such contract, sellers were required to deliver the natural gas produced by it "into the custody" of Natural on the suction side of such compressor station; and after compression, Natural was required to redeliver such gas to sellers' gasoline plant. Thereupon, after the treatment of such gas at such extraction and dehydration plant of sellers, sellers were required to deliver the dehydrated residue gas into Natural's pipeline at the outlet of such plant. At or near such point of delivery, Natural was required to install a metering station for the purpose of determining the volumes of gas delivered by sellers from such extraction plant into Natural's pipeline. It was expressly provided in such contract that title to the dehydrated residue gas purchased by Natural should pass to Natural at such point of metering.

[fol. 32] 6

The parties to such contract (including Panoma Corporation, as successor in interest of sellers under such contract) have faithfully performed the obligations of, and operated under, such contract from the date of first delivery by sellers to buyer in August, 1948, to date.

7

Applicant herein sells none of the production from the wells covered by its contract with Natural at the wells or elsewhere in its raw state. All of such gas as is produced from such wells is gathered through applicant's gathering system to a central point at the inlet of Natural's compressor station (placed for applicant's convenience at the suction rather than the discharge of applicant's extraction plant) where such gas is delivered into the custody of Natural, without measurement. After the gas has been

compressed by Natural, it is delivered back to applicant's extraction plant. At such plant, applicant extracts large quantities of liquid hydrocarbons and products, and after such extraction delivers into Natural's pipeline the residue gas remaining after such extraction. Applicant sells the [fol. 33] liquid hydrocarbons extracted from such raw gas for large sums of money.

8

Applicant realizes (through the sale of such liquid hydrocarbons and products extracted at such plant and sold and through the sale of the residue gas to Natural) from such natural gas so produced from the leases owned by it in the Guymon-Hugoton field, and covered by applicant's contract with Natural, the equivalent, on the average, of more than 7¢ per thousand cubic feet (measured at 14.65 lbs. pressure) at the well head within the terms and meaning of Orders Nos. 19514 and 19515 of this Commission as interpreted by its Order No. 19702, and by the opinions of the Supreme Court of Oklahoma and the Supreme Court of the United States.

9

Natural shows that in Article Fourteen of the contract herein referred to, it is expressly provided:

"Contract Subject to Laws and Regulations.

This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law [fol. 34] or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulations."

Therefore, if any valid order of this Commission, properly construed, requires Natural to pay any sum or amount inconsistent with the specific price provisions of the contract, the contract, subject to the other provisions

thereof, will be its own terms be modified to conform with such requirement and applicant will have, for the enforcement of such contract as modified, an adequate remedy at law. Natural will comply with the provision of such contract above quoted.

10

If said order were construed as requiring Panoma to realize for the dry gas constituent of the gas or for any other constituent of the gas produced from the Guymon-Hugoton field, the same price as provided by said Order 19514 for natural gas there produced at the well head, without giving consideration to the sums received by applicant from the sale or other utilization of the other con- [fol. 35] stituents of such natural gas, or if, under the circumstances, the Commission should require that Panoma cease to deliver such residue gas to Natural under the contract, such order would be discriminatory, arbitrary and void, and contrary to the provisions of all applica*lbe* statutes authorizing action by the Commission, and would be violative of Sections 7 and 15 of Article II of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States, and would impose a discriminatory and unlawful burden upon interstate commerce, contrary to the provisions of Section 8 of Article I of the Constitution of the United States. Natural, to the full extent of its interest in the proper construction of said order of this Commission, invokes the protection of all applicable provisions of both said Constitutions.

Wherefore, premises considered, Natural respectfully says that, under the facts, there is no matter within the jurisdiction of the Commission presented for consideration and that the application should be dismissed.

S. A. L. Morgan, Warren Spies, D. H. Culton, Monnet, Hayes, Brown & Bullis, by (S.) Coleman Hayes, Attorneys for Natural Gas Pipeline Company of America.

[fol. 36] Proof of Service

I, Coleman Hayes, one of the attorneys for Natural Gas Pipeline Company of America, certify that I mailed a copy of the above and foregoing response to T. Murray Robinson, attorney for Panoma Corporation, on March 27, 1951.

(S.) Coleman Hayes.

[File endorsement omitted.]

[fol. 37] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Transcript of Testimony

On April 5th, 1951, said cause came on for hearing before the Corporation Commission of the State of Oklahoma, pursuant to Order setting said cause for hearing and the order of continuance granted in said cause.

Appearances:

The Applicant appeared by T. Murray Robinson, and Wallace H. Robertson.

The Natural Gas Pipe Line Company of America appeared by Coleman Hayes, D. H. Culton, and Warren Spies.

The Corporation Commission appeared by Floyd H. Green.

The cause proceeded to hearing, as follows:

[fol. 38] Offers in Evidence

Mr. Green: I offer in evidence as Exhibit 1, a copy of the Application in said cause;

As Exhibit 2, a copy of the Order Setting the Cause for Hearing on February 14th, 1951;

As Exhibit 3, a copy of the Notice of Hearing issued by the Commission;

As Exhibit 4, a copy of the Affidavit of Mailing Notice, signed by Edna Conner;

As Exhibit 5, a copy of the Proof of Publication of the Notice in Oklahoma City;

As Exhibit 6, a copy of the Order Continuing Said cause to this time and place;

As Exhibit 7, a copy of the Response of the Natural Gas Pipe Line Company of America.

I offer exhibits 1 to 7 inclusive.

Chairman Bond: Received. Do you want to make a statement, gentlemen?

Mr. Robinson: I think a brief statement would be of assistance to the Commission.

Chairman Bond: Very good.

Reporters Note: Opening statements were made by Counsel for the parties.

Testimony was then introduced, as follows:

[fol. 39] Chairman Bond: Call your first witness.

Don Harrington, called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name, please?

A. Don Harrington.

Q. What is your official connection with the Panoma Corporation?

A. President.

Q. When was the Panoma Corporation organized?

A. In 1948.

Q. Did the Panoma Corporation succeed to Oklahoma properties of Harrington and Marsh, a partnership?

A. Yes, sir.

Q. Did they succeed to all the rights and liabilities in respect to previous transactions with the Natural Gas Pipe Line Company?

A. Yes, sir.

Q. For how long a period of time has Harrington and

Marsh or Panoma Corporation been delivering gas to Natural Gas Pipe Line Company?

A. Since August, 1948.

[fol. 40] Q. That was subsequent to the date of the Commission's price order in the case?

A. Yes, sir.

Q. At what point is that gas delivered to Natural Gas Pipe Line Company?

A. It is first delivered at the intake of their process station, about three miles west of Hooker, Oklahoma.

Q. What,—how many wells do you now own in the Panhandle?

A. Under this contract, 117, I believe it is.

Q. Then, are there a hundred and seventeen wells which, production from which, is being supplied to Natural Gas Pipe Line Company?

A. That's right.

Q. About how many cubic feet of gas per day is currently being delivered?

A. About,—at the intake under compressor station, approximately eighty million feet of 15.4 gas.

Q. Is the gas metered at the intake side of the compressor station?

A. Not at that point. It is metered at the well head, but there is no master meter at the intake side.

Q. As a practical matter could a master meter accurately [fol. 41] report volumes at that point?

A. Yes, very simply.

Q. Now, have you made a computation of the total moneys which Natural Gas Pipe Line Company has paid Panoma Corporation for gas which has been delivered to them up to the close of business, December 31, 1950.

A. Yes, sir. We received total, from August '48 to the end of 1950, inclusive, a total received for three million, six hundred and thirty-four thousand, five hundred and twenty-three dollars and seventy-four cents. That's at a price basis of 5.12 cents of 14.65 gas.

Q. It's the volume of gas delivered to Northern Natural, reduced to a pressure base provided by the Corporation Commission, you received a 5.12 cents per thousand cubic

feet, gas payment from the Natural Gas Company for this gas?

A. Yes,——

Q. From the Natural Gas Pipe Line Company.

A. Yes, th. 's the net volume actually delivered them at,—in their main 26-inch pipe line.

Q. Now, you haven't taken into account the deliveries and payments since January 1, 1951?

[fol. 41-a] A. No, sir.

Mr. Robinson: If the Commission please, I think at this point it may be agreed that with respect to both parties that computations of facts which are before the Commission may be terminated as of December 31, 1950, for the simple reason that they cannot be extended on into the future, accurately.

Mr. Culton: What,—well, what I think you intended to say is that the same conditions which existed December 31, 1950, has continued down to this date.

Mr. Robinson: That's satisfactory. Yes, sir.

Chairman Bond: Very well.

Q. Have you sent Northern Natural a statement for this gas?

A. You mean Natural Gas Pipe Line Company?

Q. I mean Natural Gas, yes,—Natural Gas Pipe Line Company, a statement for this gas?

A. Yes, they have been invoiced for all the deliveries on what we calculated the price to be under the Commission's order.

Q. Exhibit Number 8 which you have before you is a photostatic copy of something,—what is that?

A. That is the invoice which you referred to, which we [fol. 42] submitted them.

Q. Is that invoice brought down to what date?

A. Down to the end of January, 1951; however, the figures which I quoted were the end of December, 1950, and——

Q. Now, that invoice indicates a difference in money of——

Mr. Culton: If it please the Commission, counsel has started to ask for an interpretation of the invoice as a

whole. We have no question whatever with respect to column 1, referring to period. Column 2, referring to pipe line and fuel volume at 14.65. Column 3, referring to Panoma Fuel and Shrink. Column 4, referring to total inlet at compressor station, or Column 6, referring to the payments made by Natural. We object to interrogation as to the value at 7 cents. It's a matter of computation, of course, if it were an issue before the Commission. For the same reason we object to column 7, additional amount due and column 8, six percent interest. In the first place, if it were before a court our position would be that the interest question wouldn't be allowable. In the 9th column on excise tax, which is obviously not a matter before the Commission we have informed the applicant that we accept their figures, their computation, as to the loss by [fol. 43] fuel and shrinkage. We agree to the volumns which they show of gas that's been delivered, measured at 14.65,—the sum of those two columns and the amount which has actually been paid. Our objection is that the other columns are wholly immaterial to this inquiry.

Chairman Bond: You contend, though, that you're not paying seven cents at the mouth of the well, but you contend by reason of other products and other processes that they average more than seven percent?

A. That's right.

Chairman Bond: Is this witness trying to show what they average up?

Mr. Culton: I don't know. This 7-cent column is just a multiplication of the items shown in 4, being the total volumns of natural gas, delivered at the inlet or compressor station by 7. Then, column 7 is subtracted from that column of the items shown,—as I say, we have no objection.

Chairman Bond: Or is he trying to show that these are two separate transactions. That one ought to be the sale of gas at seven cents or is he taking some other action that they are a separate and independent [fol. 44] action?

Mr. Culton: Well, he hasn't shown what these columns represent as a matter of fact. The questions were on the assumption that that has been shown.

Mr. Robinson: I just asked him to identify the exhibit at that point. I hadn't offered it in evidence.

Chairman Bond: Well, if he is just identifying them he may identify them and when they are offered in testimony they may be objected to then.

Mr. Culton: I probably misunderstood the question he had started to ask. I'm sorry.

Chairman Bond: Very good.

Examination, continued:

Q. May I inquire, Mr. Harrington, what this first column is?

A. The first column is the period reflected by the invoice.

Q. The second column is what, please sir?

A. It's the total volume delivered to, or sold to Natural Gas Pipe Line during that monthly period.

Q. Is that after going through two meters,—is that after two meters that you have?

A. Yes, that's the actual measure of gas delivered for [fol. 45] which they tendered us payment.

Q. Now, then, what is the next column please?

A. That is the calculated volume of the actual shrinkage or usage of gas in connection with the dehydration, or processing at our own plant.

Q. And these two columns give you then, the amount of gas which was delivered to them at their compressor station?

A. Yes, sir, total well head volume.

Q. Now, then, this total well head volume of gas which is delivered to them, is that shown at the next column, total inlet at Compressor Station?

A. Yes, sir, that's column number 4.

Q. Now, then, seven cents is the mathematical computation of the volume delivered at 7 cents according to the Commission's price order?

A. Yes, that's the well head volume multiplied by seven cents, 14.65.

Q. Now, then, what is the next column?

A. The next column is the actual payment of the contract stipulated price, which they paid us for each book.

Q. Then, this column marked Additional Amount Due is

merely a subtraction of the amount which they paid from [fol. 46] the amount which would be the price at 7 cents?

A. Yes, sir, that's correct.

Q. The next column would simply be a column indicating what a six percent interest would be, from the date which payment would have been due down to the present time?

A. Yes, sir, down to February 28th.

Mr. Robinson: I would concede that the last column has to do with one-half of the excise tax which is probably not a proper part of the proof.

We would now like to offer in evidence all of the matters shown on this exhibit, except the last column.

Mr. Culton: We realize, of course, that your mathematical calculations as such are not injurious to anybody; however, so that the Commission may understand that we not concede that in this proceeding, there is any relief that could be granted by way of valuing this particular gas or providing for interest. Our objection to column 5, 7, and 8, is only that the information thereon is wholly immaterial. I understand that column nine is not offered.

Commission-- Jones: The objection is overruled, and exceptions allowed.

Mr. Robinson: We offer all the columns on the exhibit, [fol. 47] number 1 to 8, excluding 9.

Commissioner Jones: The exhibit will be received. Exceptions will be allowed.

Examination, resumed:

Q. Mr. Harrington, who owns this compressor station to which you deliver this gas?

A. The Natural Gas Pipe Line Company of America.

Q. Do you *own* the property on which it is built?

A. No, sir.

Q. Do any of your employees operate that plant?

A. No, sir.

Q. Did you pay a part of the cost of erecting the plant?

A. The Compressor plant,—no, sir.

Q. The point at which they received the gas from you was the inlet side of that compressor?

A. Yes, sir.

Mr. Robinson: That's all from this witness.

Cross-examination.

By Mr. Culton:

Q. Mr. Harrington, you have been in the gas business quite a number of years?

A. Yes, sir.

Q. And actively identified with the operation of extraction plants and the sale of residue gas and extraction [fol. 48] of liquids for quite a good many years?

A. Yes, sir.

Mr. Robinson: Now, if the Commission please, I asked him nothing whatever about extraction plants in direct examination. Our position is that since we delivered gas to them, at this point, have received so much money,—they obviously haven't paid seven cents for it,—it's wholly immaterial, doesn't have anything to do with gasoline plants and they are not involved or in issue in this case. I don't want to have to continuously repeat our objection every time there is something involving a gasoline plant and I want to make the objection now so that it will be good for the entire record, that anything having to do with gasoline plants operations at a profit which is derived from this is obviously,—and I object to it.

Commission-- Jones: Confine your cross examination to questions asked on direct.

Mr. Culton: I think I will if Counsel will just notice a little further,——

Q. The gas which is delivered to Natural Gas Pipe Line Company does not constitute the gas which goes into Natural's Compressor station. I mean the gas that [fol. 49] Natural pays for, does not constitute either the volume or the quality of gas which goes into Natural's Compressor Station, does it?

A. It comprises approximately 95% of the volume. The

quality is changed by the removal of the substances which the contract provides we are obligated to them.

Q. Yes. I hand you a document which is entitled "Gas Purchase Contract between National Gas Pipe Line Company of America and Harrington & Marsh, dated as of December 1, 1946," and ask you if that is a copy of the contract.

A. Yes, sir.

Mr. Robinson: We object to the contract.

Q. I hand you herewith a photograph and ask if that photograph was taken from your files?

A. Yes, sir.

Mr. Culton: May we have it marked for identification. I wonder if we can get it where the Commissioners can see it, and I want to show on that photograph the Compressor station of the Natural and state whaat the other facilities shown on that photograph are.

A. In the foreground is a portion of the Panoma Gasoline Plant and facilities and the large building sitting [fol. 50] rather diagonally in there is the compressor station of the Natural Gas Pipe Line Company.

Q. How far apart are the compressor station of the Natural and the facilities of your plant?

A. Three-eighths to half a mile.

Q. Are they on the same survey of land?

A. No, sir. One is in section 7; the other in section 8.

Q. Is there a road in between them?

A. Yes. There is a county highway in between them.

Q. I hand you a document which purports to be a schematic chart not drawn to scale, of course, but which purports to show the relationship of the facilities almost schematically. This is a copy of the chart that's before you gentlemen.

Now, the gas comes from Panoma's gathering line into the facilities of the Natural Gas Pipe Line Company compressor station without measurement?

A. Yes, sir, except the well has well head gas.

Q. And there is a gasoline drip by which circulation coming out during the transportation is taken out before the gas gets into the compressor station?

A. There are several drips.

Q. All right. Now, with respect to Natural's property [fol. 51] before it gets to the compressor station.

A. I presume there is but I have no definite recollection of it.

Q. You recognize that pure gasoline may come out——

A. I would say the liquids would be extracted.

Q. The gas that you deliver to the Natural Gas Pipe Line Company which is measured at the metering station is taken into Natural's line.

A. Yes, from 3/8 to a half mile.

Q. And from there it goes to Natural's main line?

A. That's my understanding, yes, sir.

Q. And goes to Natural's markets, Illinois and other points in the east.

A. As a matter of fact it goes through Natural's Pipe line from the time it enters the compressor station.

Q. Yes. Natural owns the pipe from there on. The gas that you deliver to the Natural Gas Pipe Line Company and which is measured at the metering station is taken through Natural's lines?

A. Yes, sir. For about 3/8 to a half mile, yes, sir.

Q. I'm talking about after it is measured.

A. Oh, yes, sir.

Q. And there, from there it goes to Natural's main line? [fol. 52] A. That's my understanding, yes, sir.

Q. And it is there it enters the main line and goes to Natural's markets in Illinois and other points to the east? As a matter of fact it goes through Natural's pipe lines from the time it enters the inlet at the compressor station?

A. Yes.

Q. Natural owns,—you own the pipe up through the Compressor station, and Natural owns the pipe from that point on?

A. Yes, sir.

Q. Off of that pipe, the gas goes into your facilities for extraction and dehydration?

Mr. Robinson: We object to that, if the Commission pleases. It's our position that the gas is delivered to them at the compressor station and they pay for that gas,

is about 5.12. Now, that's as far as the witness was questioned on direct examination.

Chairman Bond: Are you contending that it is not proper cross examination?

Mr. Robinson: Not proper cross examination and not an issue in this case.

Chairman Bond: Well, the Commission might rule on [fol. 53] the not being proper examination. I don't know. I didn't hear all the examination. The Commission's going to appear liberal on the receipt of testimony and we will admit a lot of it, probably; for what it's worth, so we can pass on it when we try this case. Of course, if you didn't bring this out on direct examination, it's improper cross examination. I don't know. The Commission will receive the testimony for what's it's worth.

Mr. Culton: Shall I proceed?

Chairman Bond: You may proceed.

Q. Mr. Harrington, Natural does not pay you for the volume of gas which enters its compressor station, does it?

A. Not for the total volume, for about 95% of it.

Q. Natural does not pay you for the quality of gas that enters the compressor station, does it?

A. Well, the gas is processed in accordance with the contract as I said before, because we're obligated to do so. It isn't the same identical gas. No.

Q. You take out a substantial portion of the liquids from the gas which enters the compressor station before you meter the gas to Natural?

A. Yes, sir. The water and the liquid hydrocarbons.

[fol. 54] Q. Now, the gas which enters the compressor station is not of a quality which is deliverable by you to Natural under its contract, is it?

A. No, sir.

Q. That quality must be changed by the extraction of liquids?

A. That's our contractual obligation, yes.

Q. Yes. Now, you recognize that under the contract, if there is a leak in the extraction unit, so that large

volumes of gas would escape, Natural would be under no obligation to pay you for that escaped gas?

A. I believe they would, if such a leak was the result of negligence on the part of Natural.

Q. But if it's the result of negligence on your part or an unavoidable accident?

A. Well, then, it would be our loss.

Q. The contract expressly states that title passes from Panoma to Natural at the meter station. You recall that, do you not?

A. Yes. That's our point of sale.

Q. Yes. And that, you knew, referred to residue gas and not to raw material, to raw natural gas, didn't you?

A. Obviously, except as to such gas as Natural uses for [fol. 55] its compressor fuel and that is raw gas, and for that quality, it's sold as raw gas.

Q. Let me refresh your memory. You've been away some, and may not realize that there was an amendment to the contract, was there not?

A. Oh.

Q. With a separate measuring of residue gas, separate measure of residue gas for the compressor plant?

A. There was such an arrangement, but it's purely at the option of the Natural Gas Pipe, and any time the Natural Gas Pipe told us to deliver them raw gas for compressor usage we would be obligated to do so at the contract price.

Q. Yes, but you would be *be* getting more BTUs to them than are delivered when you deliver residue gas to them.

A. The raw gas contains more than the residue.

Q. Yes. The chart has been identified as Exhibit 11 and correctly trace the flow of the gas, does it not, from the time it enters your gathering line until it is measured at Natural's meter station?

A. Yes.

Q. Recognizing the fact that the schematic chart isn't drawn to scale?

[fol. 56] A. Yes, sir.

Q. You have known for a number of years of the nature of the operations of Natural Gas Pipe Line Company, haven't you?

A. Yes, sir. In fact, since even before its birth.

Q. Yes, sir. You know that it starts with the facilities in the Panhandle field of Texas, formerly belonging to Texhoma, and has a transmission line extending up to and selling gas for resale in the states of Nebraska, Iowa, Illinois, Indiana——

A. Yes, sir.

Q. And particularly in the Chicago Metrolpolitan area. You knew, in 1946, did you not, that Natural contemplated the expanision of its faccilities for the purpose of transporting additional quantities of gas——

A. Yes, sir.

Q. To those markets. And you and Natural entered into negotiations with a veiw that the old firm of Harrington and Marsh would provide from its leases in Texas County, Oklahoma, about seventy-six million feet daily of the requirements from those added facilities?

A. Yes, sir.

Mr. Robinson: If Your Honor please, I have an objec- [fol. 57] tion to make to the last question.

Chairman Bond: Very good.

Mr. Robinson: The question was that he knew that Northern Natural wanted gas.

Mr. Culton: That's Natural gas.

Mr. Robinson: That's right. Excuse me, sir. That the Natural Gas Pipe Line Company wanted gas, and that they entered negotiations with Harrington and Marsh first. Now, I can't understand what negotiations have to do with this. I don't believe the contract has anything to do with this controversy.

Chairman Bond: The contract probably will be held by them as being something that they can rely on in some way, and I think they can ask about the contract if they want to, but any outside agreement I don't think is admissable. I think the thing that is admissible is the order of the Commission and the contract. And it may be the contract is not admissible, but the Commission is going to admit the contract. I don't think any outside agreement that this gentlemen wants to testify is admissible unless it is shown it was made by all the parties and relates directly to this case.

Mr. Culton: We have not asked for any of the terms [fol. 58] of the negotiations, Your Honor. No. We just asked whether or not they entered into the negotiation. My next question is:

Q. Those negotiations culminated in the contract which has been referred to and identified as exhibit 9.

A. They did.

Q. There have been some slight modifications of the contract, but primarily that contract is now the contract which is being observed and in force between Panoma as successors to the old firm of Harrington and Marsh, and Natural Gas Pipe Line Company.

A. It's the contract now in effect. I don't know whether it's being observed or not.

Q. Well, unless the requirements of the contract have been changed by the Commission's order?

A. Yes, sir, that's true.

Q. In other words, the point is, certainly, up until your letter written after January 1, 1951, because on both sides, faithfully comply with that contract?

A. Yes.

Q. And unless the contract has been in some way affected by the Commission's order, they are still complied with?

[fol. 59] Chairman Bond: I think that's strictly a question of law,—you may answer it. It's strictly a question of law as to whether or not the Commission's contract has been interfered with.

Mr. Culton: Yes. I appreciate that, Your Honor.

Q. Now, during the time you were negotiating for this contract, that,—all the gas which Natural ships in its lines to the Illinois markets, is dehydrated residue gas?

Mr. Robinson: If Your Honor please, he is asking him again what he knew prior to the time he entered into this contract about gas. Now, that's not material. We object.

Chairman Bond: What has that to do with the issue?

Mr. Culton: The next question will be why did they provide for the delivery of only residue gas at the meter station?

Chairman Bond: What does that have to do with the contract? Doesn't the contract provide for the character of the gas?

Mr. Culton: It does. Following that, my question would be,—why the compressor station was put in front [fol. 60] of the gasoline station instead of immediately in front of the meter?

Chairman Bond: Well, if that has anything to do with this suit, why, we'll admit it for the present.

Q. You did know, did you not, that Natural Gas, that Natural transports from its Gray County, Oklahoma, station its residue, dehydrated gas?

A. Yes, sir. I believe that's true of all transmissions of a similar nature.

Q. It's necessary to transport that character of gas because of the danger of the formation of hydrates and the danger of liquid hydrocarbons falling out in the lines during transportation?

A. Yes, that's true.

Q. It's more economic and also safer for pipeline transportation to handle that type of gas rather than Natural Gas as produced from the wells?

A. Yes, sir.

Q. and, for the many years, the extraction of gasoline has been a profitable operation in the Panhandle Field and in the field?

A. In a varying degree, yes, sir.

Q. Yes. So much so that for many years it was [fol. 61] profitable to extract gasoline without any disposition of residue.

A. Well, it was at one period. Yes.

Q. That's what I say. And the price of gasoline has something to do with the profits from the operation of such a plant, does it not?

A. Obviously.

Q. The profit from the extraction of gasoline does not increase in exact proportion as the price of gasoline increases, does it? In other words, the doubling of the price of gasoline would more than double, ordinarily, the profit resulting from the extraction of gasoline?

A. That's true, because your fixed charges don't vary but the price.

Q. Yes. The price of the gasoline, I believe, in 1946 was about five or five and a quarter. That is 26 pound gasoline, was it not?

A. I don't exactly recall what it was. I don't feel qualified to testify.

Q. You do know that after that time the price of gasoline dropped to a rather low ebb?

A. I believe 1948 was the peak year we had; it varied greatly, and I can't honestly recall.

Q. But you do know it was lower in 1949 and '50 than [fol. 62] it was in 1948?

A. Yes, sir.

Q. And lower in those years than it is now?

A. Not appreciably at this time.

Q. Well, what is the present price of natural gasoline, 26-pound gasoline?

A. I think five and a quarter *of* thereabouts.

Q. You haven't inquired recently, have you?

A. No, I haven't.

Q. Now, there are other products besides 26-pound gasoline that are taken out of raw gas as produced in the wells, are there not?

A. Yes, sir.

Q. You have butanes, propanes——

A. Yes, sir.

Q. And in your plants you extract those additional products also, do you not?

A. At times we do, yes, sir.

Q. The products which you extract from the gas are determined within the range of certain maximum and minimum by exactly what you prefer to take out at your plant?

A. No. They are determined by the amount we can take [fol. 63] out and still meet our minimum heat requirement units under the contract.

Q. That's what I say. It's in between the maximum and the minimum?

A. Yes, sir.

Q. You must take enough out, so that the dew point

of the residue gas will not exceed 25 degrees at a pressure of 785 pounds?

A. Yes, sir.

Q. That's one. Another is that you're not supposed to take out enough of the hydrocarbons to reduce the heat value to fall below 950 BTU.

A. 960 I believe.

Q. Well, the price range is based on 960, and the minimum is 950, is it not?

A. Well, subject to your acceptance of such gas.

Q. Yes. If the price of certain hydrocarbons is high enough, that you will get more out of those hydrocarbons if you take them out as liquids than if you put them into the residue stream and measure them to natural then, you'll take them out in liquids as a matter of business judgment?

A. They're worth more as liquids.

[fol. 64] Q. Yes. So if the,—depending on the market, if the value of certain hydrocarbons within the range which is permitted to you in the contract, exceeds the amount you would receive for those same hydrocarbons if they were measured into the residue stream going to Natural, you'd take them out, but if you get more money selling them as residue, increasing the heat value than you would be taking them out then you would put them in the residue stream.

A. That's true. If you're talking about net money after operations.

Q. Yes. I'm talking about profits. And you do, as you have a perfect right to do under the contract, let that control the amount of hydrocarbons you take out.

A. Yes, sir.

Q. If your heating value of the gas delivered is in excess of 960 BTU, you get a premiusm?

A. 965.

Q. 965. You're right. You get a premium from that gas?

A. Yes.

Q. If it is below you get a little penalizing, under the contract?

A. Yes.

[fol. 65] Q. As a matter of fact, during this entire period, your gas has averaged higher,—the residue gas delivered to Natural at the metering station has averaged higher than 965 BTU, hasn't it?

A. Yes.

Q. And you have in fact received slightly more for the gas during that 27 months than six cents on 16.4 pound basis, because of your BTU content?

A. Yes, sir, slightly more.

Q. So that the price that Natural pays is not for the volumes of gas which are delivered into its compressor station but for the volumes of gas which are measured after the gas has gone through your gasoline plant and dehydration plant. That's correct, isn't it?

A. It's based on the quantity that goes through the sales meter. Obviously.

Q. And the quality of gas, for which Natural pays under the contract is not the quality of the gas which goes into the compressor station but the quality of the gas which goes through the meter?

A. For which they pay us.

Q. Yes.

A. Obviously, yes, sir.

[fol. 66] Q. Yes. Mr Harrington, you have testified with respect to certain columns on exhibit number 8.

A. Yes, sir.

Q. Column 1, the period; column 2, the pipe line and fuel volume; number 3, the Panoma Fuel and Shrink; number 4, the total of the inlet at the Compressor Station, which you referred to as the well head gas. Number 6, the Payment,—now, items shown on column number 2 represent, do they not, the total volumes of gas for which Natural has paid you as the contract made on the basis of 16.4 but adjusted in volume?

A. Yes, sir.

Q. In other words, those are the volumes which have gone to Natural here at the meter stations leading to the main line, or at the metering of the gas used in the compressor station?

A. Yes, sir.

Q. The total of the two?

A. Yes, sir.

Q. Now, you have a second column, Panoma Fuel and Shrink, what is that?

A. That, as I testified before, is the net plant usage for fuel and shrinkage at the gasoline dehydration point. [fol. 67] Q. In other words, in taking out the liquids and in taking out certain moisture a portion of the elements of the raw gas which went into the compressor station have been removed?

A. That's right. Part of the gas we use as fuel.

Q. And in addition to that removal,—that's what you referred to as shrinkage, isn't it?

A. Yes, sir.

Q. In addition to that which is removed, you used in your plant certain volumes of gas for plant fuel?

A. Yes, sir.

Q. Now, the gas that you use in your plant for plant fuel, is a part of the gas which goes into Natural's compressor station isn't it? It's included in that gas?

A. The total volume goes through the station, yes, sir.

Q. And you do not pay Natural anything for that fuel gas, do you?

A. It's our gas, except it's in their custody. It's in your custody to be returned to us.

Q. That's right. Now, then, column numbeer 4 is nothing in the world but an addition of column number 2 and column number 3?

A. That's true.

[fol. 68] Q. And it is on the assumption and your best judgment that that volume which goes into the compressor station represents the well head volume of raw gas?

A. Yes, sir.

Q. This further question,—you have shown on column 6 of exhibit 8 the number of dollars that Natural paid you for the volume of residue gas shown in column 2. That's correct, isn't it?

A. Yes, sir.

Q. Now, you have received substantial sums of money from the liquids that were taken out and represented in the shrinkage portion shown in column 3?

A. Yes, our plant has gross sales——

Q. Now, your office has advised us that those sales were made to the amount of $1,366,125.29. Can you check that figure for me?

A. I'd much prefer that part of,—but I would say that the men who prepared those figures would be much better qualified. I've gone over them just briefly. I don't know anything about them. I had no part in the preparation of them.

Q. He's the same man that prepared these figures on column six that you testified to?

[fol. 69] A. No, I had something to do with this, but I had nothing to do with that exhibit.

Q. And you sold various and sundry liquids and have kept records of those?

A. Yes, our office has.

Q. Yes, that's what I mean. That's all.

Commission-- Jones: Just a minute. I want to ask you a question.

Examination.

By Commissioner Jones:

Q. How do you settle with your royalty owners. Do you settle with them on the basis of this compressor station or do you settle with them on the basis of .12 cents after it comes through the plant, plus the net proceeds of the plant?

A. We pay the actual royalty. In other words, we pay on the basis of the Commission's order.

Q. Have you been paying on the basis of seven cents?

A. Yes, they have all been paid seven cents.

Q. In connection with the question you have just been asked, you don't intend to say that if the price of gas gets up to eight cents, so as a matter of fact, from the the residue and gasoline and other liquids you net 8 or 9 cents a pound that you will immediately make that [fol. 70] payment to the royalty owners?

A. That would be net return to us,—if, after a fair return on the plant and what is customary to the industry is done, we do get eight cents, why, then, it's obvious

that if we should get a price up to that range we should certainly be glad to pay our royalty owners——

Q. You are not saying, though, that you are going to adopt the policy of the royalty owners going up and down with you——

A. I say we are giving it very serious consideration, if we establish our right to get the little price here—yes.

Q. When did you make payment to the royalty owners that you referred to?

A. During the last sixty days, I presume.

Examination.

By Mr. Culton:

Q. It was since you made the demand on Natural, wasn't it?

A. Yes, sir.

Q. When did you first tell Natural that you were not getting from Natural the amount of money that you thought you were entitled to receive under the Commission's orders—in December, 1946, or in January, 1947?

A. Shortly after the Supreme Court of the United States entered its approval of the order.

[fol. 71] Q. I don't think you heard my question. When did you first tell Natural that you thought you were not receiving from Natural the amount of money you were entitled to receive under the Commission's order?

A. I'll have to refer to my letter and the date——

Q. You have it with you, do you not?

A. I think it's in the room. Yes. On January 15, 1951.

Q. Now, that was not,—that was the first time you ever told Natural either in writing or orally that Natural was not paying you the amount of money that you thought you were entitled to under the Commission's order in December, 1946, or January, 1947?

A. No, sir. I had previously had oral informal discussions as to the impact of this minimum price order.

Q. When?

A. I should say at various times over the last two years.

Q. You never did have anything in writing, did you?

A. No, sir.

Q. And you don't remember anything definite except discussing what the total impact all over might be, do you?

A. Also as to the effect on this contract.

Q. Now, when you first wrote them in January, 1951, it [fol. 72] was on a different basis of claim, injury, than you now assert, wasn't it?

A. On advice of our attorneys we simply revised the method of preparation of invoices.

Q. And you showed different volumes did you not?

A. Yes, sir, which was part of the invoice, of course.

Q. It wasn't on the theory that you should be paid for the amount of gas that went into the compressor station, was it?

Mr. Robinson: If Your Honor please, we object to this. I don't know that it makes any difference, but we are here concerned with what the correct theory is.

Chairman Bond: I think the order and contract speak for what is right rather than what he thinks they are.

Q. Well, this further question. At the time you filed your first statement, you did not make a claim based on seven cents for the volume of gas going into the compressor station, did you?

Mr. Robinson: We object to that for the same reason.

Chairman Bond: The Commission will let him answer.

A. We prepared a number of different invoices.

[fol. 73] Q. My question can be answered yes or no. You say that you sent it in January, 1951, and my statement is that at that time you did not make any claim on Natural of seven cents a thousand for the volumes of gas going into the compressor station, did you?

A. My recollection was it was 7½ cents at that point, because we thought the average was—We prepared different invoices and honestly I'm not clear.

Q. How many did you send to Natural?

A. I believe the original and then afterward they were withdrawn and we submitted a revised invoice on the advice of our counsel.

Q. That revised invoice was not sent until after this suit, this proceeding was instituted, was it?

A. I don't know exactly the date. I was out of the State when it was prepared.

Mr. Robinson: If Your Honor please, he's just taking up the Commission's time, and mine and everybody else's by asking about these things.

The Witness: As I understand we stand on this invoice and the exhibits, and that's all I know about it.

Q. You do not now know the basis on which the first statement you sent to Natural was prepared?

[fol. 74] A. No, sir, because I had no part in its preparation.

Mr. Culton: That's all.

Chairman Bond: Redirect.

Mr. Robinson: If the Commission please, I don't wish to waive my position as to what transpires with respect to the acts of the parties in the operation of this compressor plant as to whether the contract for the operation of the Compressor plant has anything to do with the controversy which is now before the Commission but due to the fact the Commission has let that in, why, I'd like to cross examine with respect to that.

Chairman Bond: You may cross examine with the understanding that you won't be bound by it. Your objections will still stand there, just the same.

Examination.

By Mr. Robinson:

Q. You were asked if you were a man of somewhat extended experience in the business of transporting natural gas, is that true?

A. Well, producing and processing of it.

Q. Can the gas in its raw state be successfully placed into lines and transported to Chicago or does it have to be treated first?

A. It has to be treated first.

[fol. 75] Q. The raw gas in the Guymon-Hugoton field, is it a commodity which Natural Gas Pipe Line Company could put into its pipe lines and immediately start transporting to Chicago?

A. Not in its existing design and pressures.

Q. So, then, if they go out there in that field now and enter into a contract for the purchase of gas at seven cents, will they have to enter into a contract with somebody to process that gas before they can take it in that line to send it to Chicago?

A. Either that or do it themselves.

Q. Then, this contract which provides for the processing of this gas,—you contracted to do that for them, did you not?

Mr. Culton: Just a minute. We object to that as being purely a legal conclusion.

Chairman Bond: The Contract is the best evidence.

Mr. Robinson: Well, then, he inquired whether or not under this contract they hadn't processed this gas, and I'm just cross examining now. You contracted, and this contract provided that you process the gas for them, doesn't it?

[fol. 76] A. Yes.

Chairman Bond: The contract is the best testimony.

Q. Well, what do you receive as compensation? Under the terms of this contract, what do you receive as compensation for this processing of this gas?

A. You mean to dehydrate, the dehydration of it for them?

Q. Yes.

A. We receive nothing.

Mr. Culton: Just a minute. We ask that that be excluded, because the contract is the best evidence, and the contract does not show that he does either of those things for us.

Chairman Bond: If the contract fixes the price the contract is the best testimony.

Q. They compress this gas in their compressing station, is that right?

A. Yes, sir.

Q. And they deliver it to you and to your plant?

A. Yes, sir, our two plants.

Q. And the contract permits you then to take out the various liquids from this gas?

A. The contract obligates us to do these things.

[fol. 77] Q. That's my point. It obligates you. Now, does the contract say, if you don't do it, what happens?

A. Yes, sir. The contract provides that they have the right to take over our facilities, operate them, and charge us any loss.

Q. Now, for your compensation for operating this plant what do you get?

Mr. Culton: Well, the contract is the best evidence.

Chairman Bond: The contract is the best testimony.

Q. Under the terms of the contract you have extracted,—you have performed the contract,—is that right?

A. Yes, sir.

Q. You have done those things to the gas pursuant to the terms of the contract, which the contract says you must do?

A. Yes, sir.

Q. And you have then, in turn, delivered that gas, which they have in turn delivered to you, back to them in their supply?

A. Yes, sir.

Q. And that is the only place where the gas has been metered?

[fol. 78] A. Yes, sir.

Q. How much compression loss they intimated that this compression was, for your benefit, of course, how much compression loss is going through this plant?

A. Well, the outlet,—there is only about five pounds. In other words, we dropped the pressure,—the pressure is at this time about 685 pounds when it enters our gasoline facilities and about five pounds less when it goes out, so we lose about five pounds out of the 685, in extracting the hydrocarbons.

Q. In other words, you lose actually about,—well, what, about what is the pressure when it enters the compressor plant?

A. About 250 pounds, I believe.

Q About 250. They boost it from about 250 to 685?

A. Yes.

Q. So there's a boost in there of——

A. About 400 pounds I would say.

Q. Around four hundred pounds boost, and there is about a five pound drop is all, going through your plant?

A. Yes, sir.

Q. Now, is there any other drop going through the dehydration unit?

[fol. 79] Q. Do you get anything out of the dehydration unit which is of value to you?

A. No, sir.

Q. That's a service that has to be performed on that gas before it's the kind of commodity that they can move in their lines?

A. Yes.

Q. Number 3, then, if they,—if you were not doing this, performing this processing, on this gas for them prior to the time it entered their lines could they use the gas and transport it to Chicago?

A. Well, somebody would have to. Either they would have to do it themselves or contract similar services.

Q. The service has to be performed before this gas can be delivered?

A. Yes, sir.

Mr. Robinson: I think that's all.

Mr. Culton: Just one or two questions, additional.

Examination.

By Mr. Culton:

Q. You referred a while ago to the fact that the boosting of the pressure of the gas in the compressor stations was for the mutual benefit of Natural and Panoma?

[fol. 80] A. I said the location of the plant, at the exhaust rather than the intake.

Q. That's what I intended to say.

A. Yes, sir.

Q. So far as Natural itself is concerned, it could just as easily and as conveniently and as economically use gas from, where its compressor station was at the discharge side of the gasoline facilities as it could from the suction side?

A. No.

Q. Why not?

A. You would have a higher compression ratio and it would cost you more money.

Q. It depends altogether on the pressure, does it not?

A. Well, we know what the pressures are.

Q. It is true, is it not, that one of the main reasons why you desire to have it at the suction side of your plant is because it is more economically to you to extract liquids?

Mr. Robinson: Now, wait just a minute, now. I think the contract is the best evidence.

Chairman Bond: Sustained.

Q. It is true, is it not, that it is more economical for you [fol. 81] to extract liquids where the pressures have been raised to six to eight hundred pounds than from where the pressures are only two hundred to two hundred and fifty pounds?

A. Yes, sir.

Q. And this loss in pressure, going through the,—to your system, is, I believe, never more than fifteen pounds?

A. No, sir.

Q. And in order to allow for that loss going through your plant, Natural increases the pressure of the gas in the compressor station to an amount which will permit then, a,—which will permit that reduction in pressure and still leave high enough pressure to use in its transportation?

A. Yes, sir.

Mr. Culton: That's all.

Mr. Robinson: Mr. Harrington, would you take a pencil, and on this exhibit number 11 mark the point at which you turn the gas over to the employees and to the properties and to the equipment of Natural Gas Pipe Line Company?

A. You mean for compressor usage?

Q. Just where is it that they take charge of the gas?

A. Oh, you mean,—I'll mark it point of custody.

Chairman Bond: The Commission doesn't understand [fol. 82] whether that was before or after it was processed.

Witness: That would be before, Your Honor.

Chairman Bond: Very well.

Mr. Robinson: I have no further questions.

Mr. Culton: Now, on that same chart, will you mark the point at which Natural re-delivers the gas to you?

A. I'll mark it point of Re-Delivery.

Q. All right. Now, Natural does not have the custody of it, of that gas, of any of that gas, during the time it goes through your extraction plant on through your dehydration plant, does it?

A. No, the gas travels about three hundred feet, through our facilities.

Q. Now, where is the last point that Natural gets custody of that gas?

A. Could I show that photograph?

Q. Can't you show it on that, just like you showed these other points of custody?

Mr. Harrington: Well, I think it's very misleading. The two points where the gas is taken out and processed or redelivered aren't five feet apart. You might think it was clear across the country.

Mr. Culton: I just asked you to say,—you may say [fol. 83] it's at this point, as you have,—you refer to the picture. I call your attention to the fact that the meter doesn't show on the picture.

A. No, but the point of egress and ingress does. I don't know how I can get it in the record, but I can show the Commission for what it's worth,—this is their compressor station. It goes into their custody here, and comes right back to this point and comes out. The point where it goes in and comes out are about five feet apart.

Q. But between the time it goes in and comes out it has gone through your facilities, which are shown on this photograph, Exhibit 10?

A. Well, a part of it. It just goes through these two towers.

Q. Are those towers a part of your extraction unit?

A. No, sir. They are part of our facilities.

Q. But if as a result of the extraction of those liquids it goes through the units?

A. No——

Q. It goes into Natural's compressor station at the point

marked Point of Custody and after the extraction of those——

A. Well, it's split up some.

Q. Now, you refer to the meter, the sale meter. That is [fol. 84] located on your property, is it not?

A. Well, yes.

Q. It's located on your property near the discharge of the dehydration unit?

A. Well, it's a way up here.

Q. Well, by here, I mean it doesn't go through anything between the time it leaves the dehydration unit and the meter?

A. Just your pipe line.

Q. Just our pipe line. Then the meter itself is on your property?

A. I don't know whether we sold you that or not,—it's on our fee.

Q. It's on your fee.

A. Yes.

Mr. Culton: That's all.

Chairman Bond: The Commission will recess until 1:30.

[fol. 85] At 1:30 p.m. the Commission was again in session and the following further proceedings were had:

[fols. 86-90] Mr. Robinson: If the Commission please, we'd like to introduce as Exhibit Number 12 a copy of the Commission's order Number 19514, being the Price Order issued in the Peerless case.

Chairman Bond: Any objections?

Mr. Culton: No objections.

Chairman Bond: Received.

Mr. Robinson: And as Exhibit number 13 a copy of an order granting supersedeas which was granted on Cities Service Application in that price case.

Chairman Bond: Received.

Mr. Culton: What order number?

Mr. Robinson: Order Number 19596.

Mr. Robinson: The Applicants Rest.

Chairman Bond: Very well.

Mr. Culton: We ask that Mr. Palmer take the stand.
Chairman Bond: Very well.

• • • • • • •

[fol. 91] Leon L. Hoyt, called as a witness, having been first duly sworn, testified as follows:

Examination.

By Mr. Culton:

Q. You are a Public Accountant?
A. Certified Public Accountant.
Q. Certified Public Accountant. Where do you reside?
A. Amarillo, Texas.
Q. Is one of your clients the Panoma Corporation?
A. Yes, sir.
Q. Have you audited the books of Panoma Corporation for the period ending December 31, 1950, so far as the Oklahoma operations are concerned?
A. Yes, sir.
Q. Do you have with you the amount of those receipts, gross receipts, received by Panoma from liquid sold as results of this Oklahoma operations for the period ending December 31, 1950?
A. I do.
Q. What was that sum?
A. $1,308,682.02.
Q. I think you misunderstood the question. The question was the gross revenue from products for the period ending December 31, 1950?
[fol. 92] A. Well, I misunderstood your question. I thought you said the year ending.
Q. The period ending,—it would be 27 months. I'm sorry, if I didn't make it clear.
A. It would be $2,968,405.33.
Q. And do you also have the amount of money received by Panoma during that same period from the sale of residue gas as a result of its Oklahoma operations?
A. I do.

Q. How much was that?

A. $3,634,523.74.

Q. Do you also have the total expenses incurred by Panoma in connection with plant and gathering operations in Oklahoma during that same period?

A. I do.

Q. How much was that?

A. $1,602,280.04.

Q. Do you also have the total volumes of gas at 14.65 pounds pressure, which from your records entered the inlet of Natural's Compressor Station near Hooker, Oklahoma?

A. I have these figures which I have not verified, because I am not competent to verify them, but I have the figures which were furnished——

[fol. 93] Q. Give those. I think I can follow it up.

A. 70,992,632.

Q. Does that figure constitute the total of columns 2 and 3 of exhibit 8 down through December, 1950, does it not?

A. Yes, sir.

Q. You have accepted somebody else's interpretation as to how much it would be for fuel and shrinkage?

A. Yes, sir.

Mr. Culton: I'll state this to the Commission, that we have accepted the estimates made by Panoma as shown by their records as to the amount of fuel and shrinkage.

Q. And the total volume which you just gave, seventy million MCF and a fraction, is the sum of the item shown in column 4 of exhibit 8 from the, for the period 1948, 1949, and 1950?

A. Yes, sir.

Mr. Culton: That's all the questions we have with this witness.

Chairman Bond: Very well.

Mr. Robinson: Now, tehn, if Your Honor please, without abandoning our position that this inquiring into the amount of receipts and the amount of cost of operation [fol. 94] of the plant is wholly irrelevant insofar as this proceeding is concerned. Since the Commission has chosen

to let in their figures in respect to this, in support of the theory which they adopt, in this proceeding, we would like to offer rebuttal——

Chairman Bond: You may offer rebuttal without waiving any of your rights.

Mr. Robinson: There is before you now a compilation of figures which has been identified as exhibit number 14.

Mr. Hoyt: Yes, sir.

Examination.

By Mr. Robinson:

Q. That is a photostatic copy. What is that photostatic copy of?

A. Of a condensed analysis of actual and projected earnings of Panoma Corporation.

Q. Did you prepare the original from which this photostat is made?

A. I did.

Q. On the first page of this compilation there is shown the amount of receipts from the sale of plant products by months, is there not? I mean by years?

A. By years, yes, sir.

[fol. 95] Q. And there on is also shown the various costs, direct costs, which incurred in connection with the producing and processing products, those products, is that right?

A. There is.

Q. Now, the cost figure which you gave is taken from the cost figures which appear on this sheet, is that right?

A. Yes, sir.

Q. Do those include, sir, any allowance whatsoever for the money which Panoma has invested in this plant? By way of interest?

A. No, sir.

Q. Does it include any allowance for interest on money which is involved in the processing and financing this plant?

A. No, sir.

Q. Does it include any allowance for salaries to the officers of the corporation?

A. No, sir.

Q Does it include any allowance whatever as an earning or profit for ownership and management of the plant?

A. No, sir.

[fol. 96] Q. On the second page, just what is this analysis that you have there?

A. That's a condensed analysis of the information from the first page.

Q. On the number of thousand cubic feet delivered what is the amount per thousand cubic feet which you receive from sale of gas?

A. From these figures shown here .0512 dollars, or five and 1.2 cents.

Q. And then the total plant receipts less the costs for the operation of the plant, leave you this figures of $1,366,125.29. Is that right?

A. Yes, sir.

Q. How much is that per thousand cubic feet?

A. It's .0192. cents.

Q. .0192?

A. Yes, sir.

Q. Those figures totaled indicate how much of this, this applicants receives in respect to this gas then, per thousand cubic foot?

A. .0704 cents per MCM.

[fol. 97] Q. Now, does that figure, .0704 allow them anything whatever for investment in that plant property?

A. Depreciation only.

Q. In the computation which you have made it simply means that they would get their money back, is that right?

A. Yes, sir.

Q. It doesn't mean that they have assurance that any figures shown here are interest on the money invested?

A. No, sir.

Q. There are no figures shown for interest on money borrowed?

A. No, sir.

Q. There are no figures shown here for an allowance of salary management, management to the officers of the company?

A. No, sir.

Q. Is there any figure shown here which would include any reasonable allowance for plant property?

A. No.

Q. There's a third page to this exhibit. What does that show?

A. This is an analysis of what earnings would be made if allowances were made for interest paid, for six percent [fol. 98] profit on plant or a ten percent profit on the plant separately.

Q. Under number 1 allowance is made for the interest paid. Does that have reference to actual interest which these applicants have paid on their money?

A. Yes, sir.

Q. This is a figure which they actually did put out. They paid this number of dollars for the use of the money which went into the plant, is that right?

A. That is correct.

Q. Now, if you add that amount to this figure, or does the amount which they have received for gas and product sales total seven cents? I'm interested in the,—deduct also the cost of that interest, which is the result?

A. It would be necessary to receive 7½ cents, to be received, according to the other calculation .704 cents, so that we did not receive enough to take care of this by .0046 cents.

Q. Then, you lack .46 of a cent per thousand cubic feet of realizing the seven cents, after you deduct this interest factor?

A. Yes, sir.

Q. Now, then, if you would allow six percent plant [fol. 99] profit, what deficiency would be there?

A. There would be .0089 cents.

Q. That's a .89 percent if you would realize a six percent profit on that plant?

A. Yes, sir.

Q. Now, then, if you had a ten percent profit on the plant, would,—what would the figure be?

A. The deficiency would be 1.48 cents per MCF.

Q. And if you had twelve and a half percent on the plant, what would the deficiency be?

A. 1.85 cents per MCF.

Q. And if you allowed for 16 and 2/3 percent profit on your plant investment, what would it be?

A. 2.47 cents per MCF.

Q. And a twenty percent allowance on your,—profit on your plant investment, what would it be?

A. 2.93 cents per MCF.

Q. Now, behind this, behind those pages there are some pages which you call references, what are those references?

A. They are the references from which this data was prepared.

Q. In other words, by taking these references you can [fol. 100] refer to the Company's books and get the figures which you have shown on this?

A. You can refer to the auditor reports which were taken from an audit of the Company books.

Mr. Robinson: We now offer in evidence Exhibit number 14.

Chairman Bond: Received.

Mr. Culton: We understand that discussing of philosophy comes in arguments and briefs, not in the offering of tabulations. Of ourse, we don't think the last portion of the exhibit will be pertinent, but as I stated, we understand that philosophies are matters of discussion of briefs, and not in the introduction of evidence.

Chairman Bond: W*e* admitted this on the theory that you were claiming other profits besides the five cents.

Mr. Culton: That's correct, but our point is that as a matter of law, those last items that they show*n*,—the theoretical situation refer- to matters which are not taken into consideration, which is *a* matter for briefing. We object to them on the grounds of immateriality, Your Honor, but realize that the Commission can determine the [fol. 101] materiality at the same time it determines the weight.

Chairman Bond: The Commission will receive them for what they are worth.

Mr. Robinson: I have no further questions.

Examination.

By Mr. Culton:

Q. Now, Mr. Hoyt, Counsel referred to some matters which are not reflected. Your statement does not reflect the unsold liquids on hand on December 31, 1950, does it?

A. We have included them in income in these figures, even though they were not sold.

Q. On which figure is that?

A. The December 31, 1950, for that twelve months; we have gross revenues from plant products included at $1,308,682.02; we have products on hand, unsold, in the amount of $74,010.11.

Q. Was that true as to former years also?

A. Well, at the end of each year there would be an inventory that would be included, but of course they would be sold in the succeeding year.

Q. Does the item of $1,308,862.00 represent plant products which were unsold as of December 31, 1950?

A. Yes, sir.

Q. Now, there is an error with respect to a drilling rig [fol. 102] in those figures, is there not, that got into the records?

A. That's correct.

Q. And it amounts to about how much?

A. Some three thousand dollars.

Mr. Culton: I believe that's all.

Mr. Robinson: That's all.

The Witness Was Excused.

Mr. Culton: If the Commission please, we'd like to offer as a part of the record a copy of Order Number 19702, which was the interpretative order of 514. I am sure there will be no objection to that.

Mr. Robinson: I have a copy here of 19702. There is an error, however, in this copy.

Mr. Culton: Well, the error is obvious.

Mr. Robinson: Yes, it's obvious in context.

Court Reporter: Said order was marked Exhibit 15.

Mr. Culton: Now, if it was not done at the time these exhibits were identified we would like to make a formal offer of all of the exhibits.

Chairman Bond: Very well. Received.

[fol. 103] W. F. MATHENY, called as a witness, having been first duly sworn, testified as follows:

Examination.

By Mr. Robinson:

Q. What is your name, please?
A. W. F. Matheny. M-a-t-h-e-n-y.
Q. By whom are you employed?
A. Richardson Gasoline Company.
Q. Where is its office?
A. Fort Worth.
Q. How long have you been with that company?
A. Almost four years.
Q. Who were you previously employed?
A. Phillips Petroleum Company.
Q. What was your capacity? What sort of work were you connected with?
A. When I left I was Assistant Manager of the gas Department and in charge of the gasoline operations.
Q. What has been your work with your present employer?
A. Substantially the same thing, including other related items.
Q. How many different things do you suppose that you have had occasion to become acquainted with prior to the time the gasoline plant has been operated?
[fol. 104] A. I would say fifteen or twenty.
Q. You are now quoting your experience with Phillips and with your present employer?
A. Right.
Q. About what sort of a figure for plant profits would have to be envisioned before they would be willing to build such plants?

Mr. Culton: We object to the question as being wholly immaterial.

Mr. Robinson: I have qualified him as a witness who has had a lot of experience with gasoline plants. I want to prove now that they always expect profits from plants when they build them.

Chairman Bond: The Commission doesn't guarantee anybody a profit but the Commission probably misunderstood at the beginning of the case. We thought they were to make enough money out of this processing in order to raise the percentage up from five and a fraction to seven.

The only thing this Commission has undertaken to do, and it's only the present order, is to get them a minimum price for gas, for the constituents of the gas. Suppose a man would make a contract with you for five and a fraction and [fol. 105] he would try to realize something out of some other process in order to make this seven and a fraction and he would lose money, what would happen then?

Mr. Culton: The only thing that this Commission has tried to do is to get them a minimum price for the gas, and they get it from the total receipts from the liquid plus the total receipts from the residue, which amount to nine and a fraction cents, and then the cost to them of separating those two has been such as to make their net realization to .0704.

Chairman Bond: Suppose he claims he's operating at a loss?

Mr. Culton: He may be operating his entire business at a loss, but if he is getting for the constituents of this gas that price, then——

Chairman Bond: Let me say this, though. Suppose you're paying him five and a fraction for his gas. And suppose you say he's going through some process with this gas whereby he's receiving seven, or the Commission price for it. And suppose he'd say, "No, I'm losing money. I'm not making that." Then, what could the Commission do in order to see that this gas was sold for seven cents?

[fol. 106] Mr. Culton: See that the expenses of separation not give him a profit. He might never get a profit on the plant and yet the proceeds of this property, the proceeds of the constituents of the gas less the cost of the separation,

whether he got a profit on this, on his gathering system, whether he got a profit on his plant, is not material. How much does he sell the constituents of that gas for after separating it into its constituents?

Chairman Bond: Suppose he said to you, "I'm just going to charge you seven cents straight for gas. We won't have any processing." What could you do then?

Mr. Culton: If he'll do that he'll find us taking him up right now. For this reason. In the long run they get a whole lot more than they've gotten the last two or three years. The price of gasoline has been a little low, but you take the price of gasoline during several other years, it went up as high as eight cents, then he would be getting eight, nine or ten cents for the gas, maybe. As a whole, in the long run, they may get more. That's one of the business gambles that they take. If we were to participate when the price of gasoline goes up——

Chairman Bond: You couldn't participate because you [fol. 107] have no interest in it.

Mr. Culton: I beg your pardon.

Chairman Bond: I say you can't, though, because you have no interest in the plant, can you?

Mr. Culton: No, because——

Chairman Bond: If you could you'd take over the plant.

Mr. Culton: We'd take that plant and operate it.

Chairman Bond: And sell the gas straight at seven cents. Now, how much would you pay him for a plant that's paying seven cents?

Mr. Culton: We'd pay him exactly what it's on his books for.

Chairman Bond: Well, I think, then, he'd be entitled to show what it's on his books for.

Mr. Robinson: Is this right, that you will purchase our plant?

Mr. Culton: Yes, at the depreciated value shown on the books.

Mr. Robinson: Then, will you pay us seven cents for our gas?

Mr. Culton: Less the cost of gathering it.

Chairman Bond: You men may sell and buy. The

[fol. 108] Commission is going to hear all this testimony. We'll give you an exception.

Examination.

By Mr. Robinson:

Q. What is the lowest profit figure builders and operators of the plant have ever known to be taken into consideration in the building of one of these plants?

A. I have never been a party to one that's paid out in ten years, but I understand it has been done.

Mr. Culton: Just a minute. We object to that and ask that it be excluded because not responsive.

Chairman Bond: Sustained.

Q. When these various people that you know that built these plants and remodeled those other,—or built fifteen and remodeled fifteen when they sit down and determine whether or not they're going into the project or not. What is the lowest profit figure which you have ever known to be taken into consideration in connection with the building of one of these plants?

Mr. Culton: We object to that as a, because it's an improper basis for determining their basis for payment even if they're entitled to it.

Chairman Bond: The Commission thinks the question is irrelevant, but we'll hear the answer. The Com-
[fol. 109] mission thinks that probably you ought to limit your testimony to the profit of the plant in question, but we'll hear the testimony.

Q. Well, all right. You may first answer that.

A. The usual yardstick is five year payout.

Q. It is——

A. Being extended, however, maybe for unusual circumstances in respect of constant volume and long reserved life.

Q. Tell me, sir, you have been in on a lot of these computations,—tell my why the operators ordinarily are not interested unless they think it will pay out in about five years?

A. There are too many exigencies connected with the

business. You never know from day to day what your volume through the plant is going to be. You can lay out a beautiful set of speculations as to volume, gasoline content, and particularly prices. And you assume that you are going to sell it. You do not know,—I would suggest that you have already found that you are not putting through that plant as much as you thought *t*you would; you are not getting the price for your product that you thought you would get and in many case you burn [fol. 110] your propane and butane and don't sell it at all. But you have to use your best judgment, for a long range term in front of you.

Q. What would be a reasonable profit allowance for a plant of this kind which is operated in this field and that has a connection here with the Natural Gas Pipe Line Company for the gas which results after extraction?

Mr. Culton: Just a minute. For the record we object to that question, because the witness hasn't shown himself qualified to answer. On the contrary, he has shown affirmatively that he is not qualified to answer the question. That in addition to my former objection on materiality.

Commissioner Jones: Can you qualify him further?

Mr. Robinson: Well, he's qualified here. He said he has talked with I don't know how many people who are familiar with these plants, their operation, and understand what profits you have to realize in order to stay in business.

Commissioner Jones: Are you acquainted with this plant?

A. In general with this plant, and with several very similar to it in particular.

[fol. 111] Commissioner Jones: You may answer.

Q. What sort of allowance for profit do you think there ought to be in connection with the operation of this plant?

A. I will say that the very minimum, at least ten percent after the depreciation.

Q. That's ten percent——

A. Net profit, after depreciation.

Q. Net profit after depreciation.

A. And I'd take a long look at it before I'd put my own money in it that way.

Mr. Robinson: You may cross examine.

Examination.

By Mr. Culton:

Q. What experience have you had with respect to the construction, advising the construction of the plant where all the gas going into the plant belonged to the person constructing the plant and he had a contract for a twenty-year period for sale of all of the gas, all of the residue gas?

A. I have been in on several like that.

Q. Where? Who?

A. That Phillips Petroleum had.

Q. And Phillips Petroleum Company had a sale of all of the gas, and you recommended that they not make that deal [fol. 112] unless they had a payout in five years?

A. Ten years would be the absolute limit.

Q. And you recommended to them that they not go into it if they didn't get it a payout in ten years?

A. I sure would.

Q. Well, did you?

A. Yes.

Q. Do they charge depreciation?

A. Yes. No, you couldn't get Phillips to build a gasoline plant on a ten-year payout.

Q. You couldn't.

A. I'm talking about payout after depreciation. No, you couldn't get Phillips to build a gasoline plant on a ten year payout.

Q. You couldn't?

A. No, I don't think you could. Unless for some other reason than the investment in the plant.

Q. Do you know how much the Northern Natural Gas Company was allowed by the Federal Power Commission as a return on its gasoline plant?

A. Six to six and a half percent, isn't it?

Q. Do you know how much Panhandle Eastern was allowed?

A. Oh, they are all allowed the same, are they not?

[fol. 113] Q. When was this deal that you recommended to Phillips Petroleum Company that they not go into it unless they got a ten-year payout?

A. I never recommended a deal to them that was a ten-year payout.

Q. When did you make your last recommendation to them?

A. In the Spring of '47.

Q. For the construction of which plant?

A. That I do not recall. There were usually ten or fifteen tank jobs going on all the time.

Q. I know, but we are talking about a specific plant where the Company had a market for the residue gas for twenty years as soon as all the liquids were extracted, and it owned all the gas that was going into that plant, and you recommended that they not build it unless they got a ten-year payout.

A. I did not. I said I never recommended a plant job that would not pay out in ten years.

Q. My question is, do you know how many leases were tied to that plant, dedicated to that plant, with the residue dedicated to a particular purpose over a twenty-year period? When was the last one you recommended to Phillips?

A. In the Spring of '47.

[fol. 114] Q. And where was it?

A. I don't recall.

Q. Do you know how much gas was under contract to that place?

A. Do you want me to take a particular example?

Q. Whatever place you are talking about, in 1947.

A. I made that recommendation in 1947 to my present company.

Q. About which plant?

A. Keystone.

Q. Where is Keystone Plant located?

A. Texas. West Texas. Permian basin.

Q. Is that a gas area or a casinghead gas area?

A. Casinghead gas area.

Q. That was casinghead gas there, wasn't it?

A. Right.

Q. And you know that casinghead gas is not likely to last for any ten years, don't you?

A. That's right.

Q. You know that ordinarily casinghead gas does not last more than five to ten years?

A. Up to the days of proration they usually last longer than that.

[fol. 115] Q. But you are not talking about an absolute dedication of the full capacity of the plant for twenty years, were you?

A. No.

Q. And how about the residue to that plant?

A. It's sold to El Paso.

Q. At what price?

A. Seven cents.

Q. On what pressure basis?

A. 16.4.

Q. On 16.4. Any sweetening to do?

A. No, sir, it's sour.

Q. You don't sweeten your gas?

A. Do not.

Q. Do not sweeten your gas. It goes into your line as sour gas?

A. Right.

Q. And do you know how long Phillips has engaged in furnishing absolute quantities of gas under that contract?

A. That's not Phillips. That's my present operation itself.

Q. Oh, that's your present operations. Your company's present operations does not have any instance where it is [fol. 116] extracting liquids from natural gas, does it? Only from natural gas?

A. Substantially correct.

Q. Well, why is it not absolutely correct?

A. We have a little natural gas, well pressure gas.

Q. Practically all of the gas going into it is casinghead gas?

A. Yes.

Mr. Culton: I believe that's all.

Examination.

By Mr. Robinson:

Q. While you were with Phillips you helped go over a lot of plans for processing natural gas?

A. All the Hugoton plants and Moore County plants, of which,—well, Guymon, Oklahoma is a good example of that well pressure plant where Phillips had a gathering system, long term contract on the gas. The gas going in that case to Panhandle Eastern. And in the design, the building, the operation, the payout and everything else was very similar.

Mr. Robinson: That's all.
The witness was excused.

[fol. 117] T. MacDonald Biddison, called as a witness, having been first duly sworn, testified as follows:

Examination.

By Mr. Robinson:

Q. Mr. Biddison, where do you live?
A. Tulsa, Oklahoma.
Q. What is your business, sir?
A. Consulting Engineer, oil and gas work.
Q. How long have you been in oil and gas work?
A. In consulting work since 1928. I have been engaged in engineering in the oil and gas industry since May 20, 1905.

Q. Now, are you a member of any group of societies of professional persons concerned with this subject matter?

A. Yes, I'm a member,—I'm a fellow in the American Society of Mechanical Engineers; I'm a member of the American Institute of Mining and Metallurgical Engineers; I'm a member of the Association of Coronal Engineers; I'm a member of the American Gas Association, Pacific Gas Association, and Southern Gas Association; I'm a licensed Professional Engineer in Oklahoma, Texas, Illinois, and the Province of Alberta, Canada.

Q. How many gas fields have you had occasion to examine from the standpoint of possibility of construction of gaso- [fol. 118] line plants, possibility and feasibility?

A. Fifteen or twenty.

Q. How many gasoline plants, sir, have you conferred with clients on prior to their construction?

A. About the same number.

Q. How many different companies, do you suppose, sir, that during that period of time you have conferred with with respect to the possibility of construction of gasoline plants?

A. Probably two or more.

Q. Have you been furnished any facts and figures with respect to the operation of this plant out there in the Guymon-Hugoton Field?

A. I have.

Q. What facts and figures were made available to you, sir, in respect to that computation?

A. The condensed analysis of actual and projected earnings, the tabulation which is exhibit 14 in this case, Corporation of Oklahoma operations, which is exhibit 14 of this case. A tabulation of Revised Receivable,—Natural Gas Pipe Line Company under Oklahoma Corporation Commission Price Orders, exhibit 8 in this case, and some additional figures which have been furnished to me by [fol. 119] Mr. Hoyt and that are records in this case.

Q. Did Mr. Hoyt, the auditor, make his computations from the Company's books?

A. That's right.

Q. Did you have furnished to you any figures concerning the volumes of gas which have passed through the plant during the period of time involved?

A. I *H*ave. Those figures available from exhibit number 8 and exhibit number 14.

Q. Have you had available the amount of the investment which the applicants in this case have in the gasoline plant?

A. I have; those figures were furnished to me by Mr. Hoyt.

Q. Have you had made available to you the amount of liquids which have been extracted during that period of time?

A. I don't know that I have the gallons of liquids. I have the receipts therefrom.

Q. The amounts for which those liquids were sold?

A. That's right. No, the accruals, whether the sales were actually consummated or not.

Q. In other words, all the amounts accrued through [fol. 120] sales from liquids up to December 31, 1950.

A. That's right.

Q. Have you been asked, sir, to analyze the operation of this plant and the realization of profit from operation of this plant?

A. Yes, sir.

Q. Have you made such an analysis, sir?

A. I have.

Q. Do you have that analysis with you?

A. I do.

Q. You have before you an instrument which has been identified by the Reporter as Exhibit 16. What is that a photostatic copy of?

A. It's a photostatic copy of a computation headed on the first page "Panoma Corporation—Cost of Service—Gathering and Treating." It consists of four pages.

Q. Now, before we get into the detail on the first page what is the second page?

A. The second page is an earning analysis and at line 20 is a determination of net invested capital at the end of the year 1950.

Q. In other words it's a determination of the amount which they now have invested in the plant,—is that right? [fol. 121] A. Yes, sir. An estimate less my estimate of the proper reserve balance.

Q. Now, what is shown on the third page of this exhibit?

A. Third page, "Panoma Corporation—Estimate of Working Capital" is my estimate of the amount of working capital employed in the plant gathering system,—the amount is shown on page 3, line 12.

Q. Now, what is shown on page four?

A. Income; this is my estimate of the Depreciation Reserve Accrual and Reserve Requirement, for the years 1948, 1949, and 1950, being my estimate of the amount of accruals that would have been made during the years 1949, 1950 and

1951, reserve balance which would have been proper for the accruals at the close of the year 1950.

Q. Sir, in light of your experience with the construction and the investment involved in the construction of gasoline plants, of the kind which is the subject of the present controversy, what would you say that a reasonable, prudent operation,—operator would expect by way of investment out of such a plant before he might be enticed to construct such a plant?

A. Well, I feel sure that an investor would require a minimum net return, after income taxes, accruals, depreciation reserve, of not less than 10 or 11 per cent.

[fol. 122]

Q. From the study which you have made of the actual operation of this plant, what in your opinion is the amount which Panoma might expect to realize out of its operations of its gasoline plant? Would that be a reasonable estimate with respect to Panoma's plant out there at the present time? That's what I mean.

A. I should say ten percent.

Q. Does this computation show whether or not the total receipts that they are now receiving, both from the sale of gas and from plant products, whether or not that is realizing them eleven cents with respec- to this plant operation?

A. No, this exhibit itself doesn't reflect that, now receiving both from the sale of gas and from plant products.

Q. Without referring to the exact place on the exhibit where you got it, are all these figures which you show here reflected on the exhibit which is already in evidence?

A. All of them are not.

Q. Which ones are shown on this exhibit?

A. From lines 1 to 8.

[fol. 123]

Q. Are shown on that exhibit?

A. That is correct. Line 9 is my own determination, coming from page 4 of my exhibit 16.

Q. That is the Depreciation accrual?

A. That's right.

Q. Now, let's explain how you,—let's turn to page 4 and explain how you arrived at that depreciation accrual.

A. On page 4, line 1, are shown the investment figures at the close of the year, for extraction plant, lease lines and gathering system. At line 2 is shown the amount of depre-

ciation accrual against those, at a five percent rate. Beginning at line 4, down to line 11, I listed the values at the close of 1950, according to the books of other property, eighty percent of which is estimated to be allocable to the service of the Extraction plant, lease lines and gathering system. On those items of property I have accrued depreciation which on the total amount of thoese journal items at .7428 percent. Therefore, for their values at the close of '49 and '48 I have computed at line 12 the accrual at the rate of .7428 percent. Since eighty percent are allocable to the plant in question I have taken eighty percent of the accrual, for the years following the column where the amounts are [fol. 124] shown. At line 13 is shown the sum of the accruals for the main plant shown at line 12 and of the accruals for the general at line 13, giving a total of accruals for the year following the column in which the amounts are shown. Beginning at line 17 then I have built up the reserve requirements for the close of the year 1950. That reserve requirement for the year 1950 is $456,887 plus, while the amount shown at line 15 is $240,023 plus. That last figure being shown at page 1, line 9.

Q. Have you followed the ordinary practices in determining the amounts which would be a reasonable accrual in respect to a plant of this type,—is this the customary manner of determining the figures which you have arrived at?

A. It is. There are other manners but this is the customary manner.

Q. Is this the one you use when you are making estimates for your clients?

A. Yes, sir, it is the one I now use. I have not always used this method, but I have been doing so for a number of years.

Q. Well, is it a fair method?

Mr. Culton: The Commission will pass on whether it's [fol. 125] a fair method.

Q. Let's go back now to that,—you have there,—that is an explanation from line 9 on page 1. Is that right?

A. That is right.

Q. Now, what is line 10?

A. Line 10——

Q. On page 1.

A. ——on page 1 is the estimate of return at eleven percent on the net invested capital at the end of 1950. And that net invested capital is determined on page 2.

Q. All right now. How have you arrived at the net invested capital?

A. At the close of 1950, as shown on line 5, the gross investment in the extraction plant, lease lines and gathering system, was $4,372,679 plus. The general property allocable to the same service, shown on line 15 was 287,956 dollars plus. The working capital required as shown in my estimate on page 3, which I will explain later, is $119,896 plus, shown at line 17, which leaves a gross invested capital at the close of 1950 of $480,532 plus, and the estimated reserve requirements shown at line 19 and coming from line 20 of page 4 was $456,887.00 plus, leaving net invested capital of $4,323,645 plus and eleven [fol. 126] percent *and eleven percent* on that as shown on line 10 of page 1 is $475,600.98. I think at this point I should explain the working capital.

Q. All right.

A. That's on page 3.

Q. Yes, sir. Now, how is that arrived at?

A. The first item comes from exhibit number 14. Now, that's shown at line one on my tabulation. It is shown between lines 3 and 4 on exhibit 14. The second item comes from line 2 of exhibit 14. Selling expense and general administrative expense, blending stocks and additives and processing fee, also come from Exhibit 14. Those items total $409,641 plus, as shown at line 8. One-eighth of that amount is $51,205.17. This represents case that needs to be available for operations in order that the business might be conducted until income was established. I have added to that at line 10 an item of materials and supplies.

Mr. Robinson: To keep on hand.

A. To keep on hand. Now, if that $68,691 plus $8,694 plus was blending stock on hand at the close of 1950 the balance in that item, fifty thousand dollars, is that part of $76,594 plus, which I am advised by em-

[fol. 127] ployees of Panoma Corporation are attributed to the operation of the processing plants, lease lines and gathering lines so that leaves a working capital item of $119,896.00 which I have used in my determination as a base of, as a base for earnings.

Q. In your opinion is that a reasonable allowance for working capital?

Mr. Culton: Just a minute. That's for the Commission to pass on.

Mr. Robinson: He's an expert.

Mr. Culton: I know, but an expert can't testify to what's reasonable. He can testify to what — usual and ordinary.

Mr. Robinson: All right, usual and ordinary, if you like that language better.

Q. is that a usual and ordinary amount to be allowed for operating capital for a plant of this size and class doing the type of operations that this one is operating?

A. It's much less than the usual requirement, but is in line with what has been the practice in allowance for such matters for the determination of rates for service by regulatory bodies.

Q. All right, sir. Now, returning again to your com- [fol. 128] putation on page 1. You say that a return of eleven percent on net investment capital is the figure which you have at the right hand side of the page, on column 10? Is that right?

A. Yes, sir.

Q. That means eleven percent of the total amount which they have to have invested?

A. That's right.

Q. Now, when you say eleven percent on net invested capital, do you mean eleven percent to the operators or eleven percent of net income before taxes?

A. That's eleven percent net after taxes. And after Federal income taxes.

Q. Eleven percent left after tax. All right, sir, what would the total figure, then, be, if, in order to make allowance for the taxes,—well, what figure have you——

A. Well, it'd be just about fifty percent more than that,

which would be about five and a half, 16½ percent, before tax.

Q. In other words, a third of the total income would be,—you just figure exactly a third, is that right?

A. I was figuring income tax, the lowest computation, would be about a third of the return trust tax, which makes [fol. 129] one-half of the tax.

Q. One half of the return?

A. One half of the return, pardon me.

Q. All right, then, what is the total cost of the service?

A. The total cost of the service shown on line 12 is $1,392,836 plus. The delivery during the year 1950 measured at 14.65 was 33,541,148 MCF and the division of line 12, by that quantity of gas shown at line 13 reduces the figure of .04153 per MCF at line 14.

Q. Now, how does that compare, sir, with the amount which is realized out of plant sales?

A. During the 1950 the receipts from the sale of products was $1,308,682.02 receipts for the sale of gas during that year, $1,711,386.23. The total being $3,020,068.25. This on 33,541,148 MCF amounts to .09004 dollars per MCF.

Q. Well, if you subtract that from the figure you have here how much are they short on realizing this plant profit, you say?

A. Subtract that figure from line 16 on page 1, leaves a deficiency of .02049 per MCF.

Q. What did you say,—.02?

A. Yes, a little over two cents.

[fol. 130] Q. Then they lack two cents per thousand cubic feet of realizing on the present payments which they are now receiving what you would conceive to be a proper allowance for plant profit?

Mr. Culton: Just a minute. We object to "proper allowance."

Commission-- Jones: He can say what his personal opinion is.

Q. Well, what in your opinion would be a reasonable and ordinary allowance for plant profit in respect to this type operations? Is that the figure you used?

A. Eleven percent is our estimate.

Q. Then, you say they lack two cents of realizing a reasonable and ordinary allowance for plant profit?

A. For such a plant, yes, sir.

Q. In your experience do you know of anybody who has ever built a plant solely to recover their money through depreciation?

A. No.

Q. If gas is worth seven cents at the well head, if as a result of the sale of both gas and the profits realized out of the operations of the plant they are recovering an average of 7.04 cents per thousand cubic feet, that in [fol. 131] effect is simply saying that all they're doing is planning their investment returned through depreciation, is it not?

A. That is true.

Q. There is not in that figure, then, any allowance for salaries of the officers of that corporation, is there?

A. That is correct.

Q. Is there any allowance in that figure for the money which they have borrowed to invest to make this investment?

A. The tabulations shows there is not.

Q. Does,—that 7.04 cents does not make any allowance whatever for any investment in respect to this plant?

A. That's correct.

Q. How much do these parties have invested out there approximately?

A. Four million and something.

Mr. Culton: You don't mean that?

A. I mean that.

Mr. Culton: No. Read that again. That's the gathering system and all the rest of the stuff in that $4,000,000?

A. Yes.

Mr. Culton: You said "plant."

[fol. 132] A. I didn't say extraction plant.

Mr. Robinson: May I inquire if this cross examination?

Mr. Culton: Well, I'm just dumb,—I didn't know but what he meant what he said.

Mr. Robinson: You'll have an opportunity to cross examine him.

Q. In your experience in the oil business when you talk about a well head drive, gas is subsequently to be marketed at some remote point and something has to be done to make it marketable,—how do you determine what the well head drop is?

Mr. Culton: We object because it is not a matter for a witness to give an opinion on,—we are talking about an interpretation of the Commission's order here.

A. The only way in which I could conceive it could be done would be to deduct the cost of service between the point of sale and the wellhead.

Q. And if you,—if you're talking about seven cents at the wellhead you'd add that to determine what there would have to be for realization at this other point. Is that right?

A. That's right.

[fol. 133] Q. And if you got the price up here yo-'d deduct the cost of service going back the other way to determine what you're actually receiving as the well head price?

A. That's right. You'd have what constitutes the service cost of rental on money.

Q. All right. Under the circumstances which here exist, payments which are now being made, what would you say is being paid Panoma Corporation as a well head price for this gas?

A. .04851. per MCF.

Cross-examination.

By Mr. Culton:

Q. What did you find the cost of money to Panoma to be?

A. I didn't investigate it.

Q. Under your method of computing you are assuming that this company would be guaranteed so much money every year?

A. No, I didn't make such an assumption as that at all.

Q. You don't think they should be guaranteed that much, do you?

A. No, I don't think anybody should have a guarantee. I think they should stand the vagaries of the——

Q. And it wasn't your idea that they would have a price under any and all circumstances equivalent to give them an 11 percent return on their investment plus all of their [fol. 134] income tax attributable to, from that operation?

A. Well, I didn't go into such matters as that.

Q. You referred to rate cases. What rate case have you ever been in where the operator of an extraction plant was allowed eleven percent return on his investments plus his income taxes?

A. I never saw a rate case involve that kind of a piece of property.

Q. You never saw any such situation as now exists before any regulatory body, did you?

A. That's right, I haven't.

Q. No, the appropriate way to determine cost of service would be in the same manner it is determined in a rate case.

A. That's right. I haven't.

Q. Now, you can assume that the appropriate way for determining cost of service would be in the same manner it is determined in a rate case, isn't it?

A. I think that's the proper way to do it.

Q. Do you know of a single instance where, in a rate case there has been an allowance of 11 percent return on the investment after income taxes, do you?

A. No, sir.

[fol. 135] Q. The running of the liquids through the plant, running of the raw gas through the plant is the method by which they realize the total constituents of the raw gas. You know that's true, don't you?

A. Yes.

Q. Do you know of a single instance where a contract has been entered into where gasoline, or liquids are extracted under a contract where the contract has been set up as the situation of the Panoma?

A. Where the contract has been——

Q. But you don't know of any contract that has been ever entered into by anybody where the owner of the plant was processing the liquids on the basis that you are using in your exhibit?

A. I don't understand your question, Mr. Culton.

Q. Well, you and I have faced each other many times, and you do not know of a single instance where any operator of a processing plant has agreed to extract liquids on a basis of compensation such as you have set up in your exhibit? Is that true?

A. Yes, I do.

Q. Where?

A. Phillips did with Michigan and Wisconsin.

[fol. 136] Q. Phillips did not enter into any contract with Michigan and Wisconsin for the extraction of that gasoline. There is no contract involved in the extraction of gasoline by Phillips before the residue gas was delivered?

A. Oh, sir, there is a contract that has to do with that.

Q. That contract is similar in many respects to the contract between Panoma and Natural, isn't it?

A. That's right.

Q. Now, in your investigation what price for gasoline did you assume for the year 1951 as shown on your exhibit, page 1 of exhibit 16?

A. I never assumed the price of the gasoline.

Q. Well, you know the price of gasoline was,—there was a period of time, say, about '46 or '47 when the price of gasoline was five or five and one-fourth cents and later it dropped to a lower price during '49 and '50 don't you?

A. Yes, that's true.

Q. You know that Phillips has extracted liquids from Pa-handle Eastern's gas at forty percent, don't you?

A. Yes.

Q. All right. Phillips hasn't lost much money on that [fol. 137] basis that you know of, have they?

A. I don't know how they came out on that deal.

Q. But you don't know of any place where a contract has been made of the type represented here?

A. Well, yes. I know of plenty places where this method of fixing payment is used. It's the Regulatory body method in rate adjustments.

Q. But they do not show eleven percent return, do they?

A. No, but they show a percent return, which is net after depreciation and after income tax. There's a net rate on the net investment.

Q. And in those instances it's important to take into consideration in considering the net return to be allowed the ease with which the regulated company is able to borrow money, isn't it?

A. Well, sure.

Q. Do you know any regulated Company having eleven percent on its gasoline extraction or on any other facilities?

A. I don't know that I do.

Redirect examination.

By Mr. Robinson:

Q. Sir, he has directed you a line of inquiry that would indicate that eleven percent might be an unreasonable [fol. 138] rate of return to a utility. Is the reason you are using eleven percent here because they do not have a guaranteed rate of return as a utility might?

A. No, a utility can only be said to have a guaranteed rate of return in the sense that they have a guarantee right to try and get it allowed.

Q. Giving some slight consideration or certainly some consideration to the risk involved in building a plant like this out there, from your experience, is the rate which you have selected ordinarily a rate in respect to what might be expected from a plant during a year like last year?

A. Last year.

Q. And if an allowance is made,—if I understand you right,—if an allowance is made to them, for a return of operating their plant, if they're paid in the manner provided in this contract, if they are only realizing .04851 per cubic feet as the well head price?

A. No. That is not the right figure. That figure is the cost of service.

Q. Well, maybe that's it. What is the figure? I've forgotten.

A. Well, they are realizing nine cents less 4.15 cents, [fol. 139] or 4.85 cents at the well head.

Mr. Robinson: That's all.

Mr. Culton: This further question. Have you checked the capacity of the gathering lines?

A. No, sir.

Q. Do you know whether they could take two or three times that much gas through the same gathering lines?

A. It would depend altogether on the pressure at which the lines are operated.

Mr. Robinson: Well, I think that's irrelevant. There is no indication that there is any possibility of that much gas. If you wish to ask him on the hypothesis that there is going to be that much gas,—do you want to ask him that question?

Mr. Culton: I'm asking the questions.

Mr. Robinson: We object to it in the form of in which it is asked.

A. Well, the only thing upon which I can base my judgment this time, is the average pressures of the formation which seem to be something on the order of maybe a hundred pounds less than delivery pressure, and I wouldn't say under those conditions that they had anything like two or three times the capacity which they were de- [fol. 140] livering.

Q. You know it is very common to put in the field boosters which make it possible to bring about the transportation of much larger quantities of gas, don't you?

A. Oh, yes.

Q. Through that same gathering system?

A. Oh, yes.

Mr. Culton: That's all.

Examination.

By Mr. Robinson:

Q. In your opinion will there probably be more or less gas delivered to that plant as time goes on?

A. Well, the inevitable decline, in formation pressure is taking place according to the records on the wells, and if the formation pressure declines, the deliverability declines and there will be a time when the deliverability will undoubtedly curtail the rate of delivery. When you get down to about half the formation pressure in one of these fields of that type, you've got only somewhere near ¼ the

deliverability you had at your original formation pressure.

Mr. Robinson: That's all.

Mr. Culton: Of course, you do know in many fields, [fol. 141] particularly in the fields, there are gathering lines now in existence after pressures in the formation have gone down, which are transmitting far more gas than was transmitted through those same gathering lines ten or fifteen years ago?

A. Oh, yes, I know.

Q. Just a minute. That's all.

Mr. Robinson: Judge, that's our rebuttal testimony.

Chairman Bond: Very well. Anything further?

Mr. Culton: Nothing further from us, Your Honor.

Chairman Bond: The Commission will close the case and take it under advisement.

[fol. 142] Said cause was heard throughout the day of April 5th, 1951, and was continued for further hearing on April 6th, 1951. At the close of the hearing the Commission took the matter under advisement, authorizing Counsel to file Briefs in support of their respective positions. On the 17th of May, 1951, the Commission, having considered the matter in conference, issued its Report of the Commission, which Report, with all endorsements thereon, is in words and figures as follows:

[fol. 143] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

REPORT OF THE COMMISSION—May 17, 1951

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, on the application of Panoma Corporation for an order interpreting and enforcing Order No. 19514, issued by this Commission, at which time Natural Gas Pipeline Company of America

requested that said cause be continued and the cause was then continued for hearing to the 5th day of April, 1951.

On the 5th day of April, 1951, said cause was again called for hearing on the application filed herein by Panoma Corporation and the response thereto filed by Natural Gas Pipeline Company of America. The applicant was represented by T. Murray Robinsons, Wallace E. Robertson, Kent W. Shartel and Richard W. Fowler, its attorneys, and the respondent, Natural Gas Pipeline Company [fol. 144] of Americas was represented by its attorneys, S. A. L. Moran, Warren Spies, D. H. Culton and Monnet, Hayes, Brown and Bullis, by Coleman Hayes; the Commission was represented by Floyd Green, Conservation Attorney, and no other persons appeared. All appearing parties announced ready for trial, and the applicant and respondent presented their evidence, and said cause was heard throughout the day of April 5, 1951, and continued for further hearing to April 6, 1951, and on the 6th day of April, 1951 the parties appearing as before, the Commission heard the arguments of counsel and both parties rested, and the Commission closed the case and took the matter under advisement, authorizing counsel to file briefs in support of their respective positions.

Now, on this 17th day of May, 1951, the Commission having considered the matter in conference, and each of the Commissioners being fully advised as to the entire record and having considered all evidence introduced, the arguments of the parties and the briefs filed, and being well and sufficiently advised, is of the opinion that the Commission should act on the application to the following extent, and the Commission finds as follows:

Findings

1. That notice by publication of the filing of the appli- [fol. 145] cation and the time and place of hearing thereon and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in the application and of the parties interested therein, and has jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That, pursuant to a contract dated December 1, 1946, Harrington & Marsh the predecessors of Panoma Corporation, during August of 1948, commenced the delivery of natural gas from wells owned by them in the Guymon-Hugoton field in Texas County, Oklahoma, to Natural Gas Pipeline Company of America, and thereafter such deliveries were continued by Panoma Corporation as purchaser and successor to all of the properties, rights and obligations of Harrington and Marsh; that the parties hereto have agreed that all determinations by this Commission may be made as if said deliveries had at all times been made by Panoma Corporation.

3. That said gas was delivered, but not metered or measured, at a compressor station owned and operated by Natural Gas Pipeline Company of America and located in Texas County, Oklahoma; that the amount of gas so de- [fol. 146] livered could be and may at all times be computed although it is not there metered.

4. That the provisions of Order No. 19514 became effective as of January 1, 1947, and after said date, no gas produced therefrom could legally be sold or purchased in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price of less than seven cents (7¢) per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute pressure per square inch and does and did prohibit sales and purchases for any lesser amount.

5. That uncertainty as to the finality of this Commission's Order No. 19514 created by the appeal therefrom to the Supreme Court of the State of Oklahoma, and the Supreme Court of the United States justified applicant in continuing the delivery of gas, without receiving payment, concurrent with the delivery, at the minimum price fixed by this Commission, until the time said order was affirmed by the Supreme Court and the mandate of affirmance filed with this Comm-ssion; this Commission had no knowledge of the acts of the parties, which the Commi. sion now finds were in violation of its order, until this proceeding was filed.

6. That deliveries or acceptance of gas in Oklahoma, [fol. 147] produced from the Guymon-Hugoton field in Oklahoma, that are not in compliance with Order No. 19514, are prohibited by said Order and the deliveries of

Panoma Corporation and receipt or acceptance by Natural Gas Pipeline Company of America are not in compliance with said order and are in violation thereof and should be stopped.

7. That the amount which the Natural Gas Pipeline Company was obligated to pay, and should have paid to comply with this Commission's Order, was seven cents (7¢) for each thousand cubic feet of gas, measured at an absolute pressure base of 14.65 pounds per square inch, which the Panoma Corporation delivered to the Natural Gas Pipeline Company of America at its compressor station and such respondent has not paid such amount and has refused to pay such amount although requested to do so.

8. That the stipulated amount of gas so delivered by Panoma Corporation to Natural Gas Pipeline Company of America at said compressor station to the first day of January, 1951, was 70,992,632 thousand cubic feet, and that is the amount, so far as it can be determined, which was produced at the wellhead.

9. That a reasonable time hereafter, in which to comply with said order is twenty (20) days, and Natural Gas [fol. 148] Pipeline of America should, within 20 days from the date of this order, pay Panoma Corporation the difference between the amount it has heretofore paid for such gas delivered to it by Panoma and the amount which it should have paid for the gas as herein determined; computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute, and unless Natural Gas Pipeline Company of America makes such payment in compliance with said order during the period and in the manner provided herein, Panoma Corporation should be directed to thereupon stop delivering gas to Natural Gas Pipeline Company of America and to file with this Commission an application for a share in the available markets that are complying with the orders of this Commission.

10. The Commission further finds that Order No. 19702, entered upon the application of Phillips Petroleum Company, was not entered as a fieldwide order, but was entered as affecting a part thereof only and on the application of an owner of a portion of the wells in the field,

and was based on facts presented to the Commission in support of the special relief or exception which the applicant in that case had requested; that therein the Com- [fol. 149] mission specifically found that applicant "did not see fit to introduce any evidence as to profit or losses from the production of natural gas from the Guymon-Hugoton Field;" that this Commission does not feel it is bound herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19702; however since respondent's contention that such order is in conflict with the findings and judgment of the Commission herein, this Commission deems it appropriate to now find that when it entered its Order No. 19514 determining

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch,"

that it applied to all producers, purchasers and takers of gas from said field, and that no sales or purchases of natural gas would be thereafter permiteed in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds [fol. 150] absolute per square inch; that the minimum price thus established would govern at the well head and at any other point in said Guymon-Hugoton field at which said gas would thereafter be delivered by a producer to a purchaser, so that the owners of the gas within said reservoir, being the lessees and the lessors, and other persons owning an interest in the gas in place, would at all times from and after the issuance of said order, receive from the delivery of their gas, as owners and producers thereof, not less than the minimum price fixed by the Commission.

11. That Order No. 19514 should be strictly enforced for the prevention of waste, the prevention of which is the basic purpose of said order and Natural Gas Pipeline

Company of America should not be permitted to plead its contract in avoidance thereof; and the contracts of the parties, neither by direction, implication nor complication can defeat the effect of the order of this Commission and to hold otherwise would cause and permit waste, and to adopt or accept the contentions of respondents would cause and invite discrimination and a general breakdown of the regulations preventing waste and protecting the correlative rights of the parties.

12. That to protect the correlative rights of the parties [fol. 151] and to prevent waste, this order should be issued.

ORDER

It is therefore ordered by the Corporation Commission of Oklahoma as follows:

1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with Order No. 19514, by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base of 16.5 pounds per square inch absolute pressure, and it is di- [fols. 152-153] rected to desist from so doing and is directed to comply with said order.

3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute

per square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America.

Done and performed by the Corporation Commission of Oklahoma at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 17th day of May, 1951.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman; Ray O. Weems, Vice-chairman; Ray C. Jones, Commissioner.

Attest: (S.) Tom McMurray, Secretary.

[fol. 154] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF APPEAL, REQUEST FOR PREPARATION OF RECORD AND CERTIFICATION OF FACTS AND RECORD TO THE SUPREME COURT—Filed May 25, 1951

Natural Gas Pipe Line Company of America, being directly affected and aggrieved by Order No. 24,745 made and entered by the Corporation Commission of the State of Oklahoma in the above styled and numbered cause under date of May 17, 1951, hereby gives notice of its intention to appeal from said order to the Supreme Court of the State of Oklahoma, and requests that this notice of appeal be duly entered upon the docket of the Commission as provided by law.

For the purpose of perfecting said appeal, Natural Gas Pipe Line Company of America further respectfully requests that the court reporters for said Commission be directed to transcribe and prepare a full and complete [fols. 155-156] record of all pleadings, evidence, exhibits, orders, notices and testimony, and that the Chairman of the Commission certify to the Supreme Court of the State of Oklahoma under the seal of the Commission and transmit to the Clerk of said Court a true and complete transcript of the record so prepared, together with a writ-

ten statement of the reasons upon which the order appealed from was based.

Dated this 25th day of May, 1951.

Natural Gas Pipe Line Company of America, by: S. A. L. Morgan, D. H. Culton, Monnet, Hayes & Bullis, by (S.) Coleman Hayes, Its Attorneys.

[File endorsement omitted.]

[fol. 157] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Application for Supersedeas Bond—Filed May 25, 1951

Comes now Natural Gas Pipe Line Company of America and respectfully requests that an order be made by the Corporation Commission suspending and superseding the operation of Order No. 24,745 made and entered in the above style and numbered cause on the 17th day of May, 1951, pending final disposition by the Supreme Court of the state of Oklahoma of the appeal therefrom, and fixing the terms, conditions and amount of the supersedeas bond required to be given therefor as by law provided.

Dated this 25th day of May, 1951.

Natural Gas Pipe Line Company of America, by: S. A. L. Morgan, Warren T. Spies, D. H. Culton, Monnet, Hayes & Bullis, by (S.) Coleman Hayes, Its Attorneys.

[File endorsement omitted.]

[fols. 158-159] BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

NOTE RE BOND

On May 31, 1951, said cause came on for hearing upon the Motion to fix Supersedeas Bond. Said Motion was presented and by the Commission taken under advisement.

Whereupon the following Stipulation was entered into by the parties hereto:

It is stipulated between the parties that the provisions of Order No. 24745, relating to the 20-day period may be amended and modified to read 30 days within which to comply with said order, No. 24745.

[fol. 160] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER FIXING SUPERSEDEAS BOND

This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of May, 1951, at 10 o'clock a.m., in its Court Room, Capitol Office Building, Oklahoma, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, and Ray C. Jones, Commissioner, sitting.

After hearing argument of counsel, the cause was taken under advisement, and now on this the 5th day of June, 1951, the Commission being well and sufficiently advised in the premises is of the opinion that the application should be granted and therefore finds as follows:

Findings

1. That this is an application of Natural Gas Pipe Line Company of America, for an order fixing the supersedeas bond in this cause, as said company desires to [fol. 161] appeal from Order No. 24745, issued by this Commission on the 17th day of May, 1951.

2. That the respondent, Panoma Corporation, insists that said supersedeas bond be signed by good and sufficient sureties to be approved by the Commission, in an amount sufficient to compensate all persons for any damage which may be occasioned by postponing the effectiveness of said order pending an appeal therefrom to the Supreme Court.

3. That the supersedeas bond should be fixed in the amount of $1,500,000.00.

4. That this application should be granted.

Order

It is therefore ordered by the Corporation Commission of Oklahoma as follows:

1. That the appeal filed herein by the Natural Gas Pipe Line Company of America be and the same is hereby allowed.

2. That the Natural Gas Pipe Line Company file in this cause, a good and sufficient bond in the amount of $1,500,000.00, and that the terms and conditions of said bond be O. K.ed or agreed to by the Natural Gas Pipe Line [fol. 162] Company of America and the Panoma Corporation, and in the event the parties are unable to agree upon the terms and conditions of said supersedeas bond, that in that event the Commission retain jurisdiction for the purpose of determining and fixing the terms and conditions of said bond.

Done and performed this 5th day of June, 1951.

Corporation Commission of Oklahoma, —— ——, Chairman, (S.) Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: (S.) Tom McMurray, Secretary.

[fol. 163] On June 13th, 1951, the Applicant, Natural Gas Pipe Line Company of America, filed in said cause its Supersedeas Bond, which Bond, was on said date approved by the Corporation Commission of Oklahoma and OK'd by

Counsel for Panoma Corporation, and which Bond, with all endorsements thereon, is as follows:

[fol. 164] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

SUPERSEDEAS BOND—Filed June 13, 1951

Know all men by these presents:

That Natural Gas Pipe Line Company of America, as principal, and *Central Surety and Insurance Corporation*, as surety, are held and firmly bound unto the State of Oklahoma, for its benefit and for the benefit of Panoma Corporation, in the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00), for the payment of which, well and truly to be made, we do heregy bind ourselves, our successors and assigns.

The condition of the foregoing obligation is such that,

Whereas, on May 17, 1951, the Corporation Commission of the State of Oklahoma made and entered its Order No. 24745 in Cause CD No. 3048, whereby it ordered:

"1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with [fol. 165] Order No. 19514, by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

"2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base 16.5 pounds per square inch absolute pressure, and it is directed

to desist from so doing and is directed to comply with said order.

"3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per [fol. 166] square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America."

And whereas, the said Natural Gas Pipe Line Company of America has appealed from said Order No. 24745 of the Corporation Commission of the State of Oklahoma to the Supreme Court of the State of Oklahoma; and

Whereas, the said Corporation Commission of Oklahoma did on June 5, 1951, by its Order No. *24805* in Cause CD No. 3048, order that the said Order No. 24745 be superseded, suspended and stayed pending the final determination of said appeal upon the filing with and the approval by the Corporation Commission of the State of Oklahoma of a bond in the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00);

Now, therefore, if the said Natural Gas Pipe Line Company of America shall well and truly pay, for the benefit of the State of Oklahoma and/or Panoma Corporation, all damages occasioned by such appeal if said Order No. 24745 be affirmed in whole or in part, then and in that event this obligation shall be null and void; otherwise to remain in full force and effect.

[fol. 167] Natural Gas Pipe Line Company of America, by (S.) S. A. L. Morgan, Vice-President.

Attest: (S.) A. S. McKenzie, Asst. Secretary (Seal).

Principal, Central Surety and Insurance Corporation, by (S.) J. Frank Murphy, Attorney in Fact (Seal), Surety.

OK: T. Murray Robinson, Atty. for Panoma.

The foregoing Supersedeas Bond examined, accepted and approved by the Corporation Commission of the State of Oklahoma this 13th day of June, 195'

Corporation Commission of Oklahoma, —— ——,
[fol. 168] Chairman, (S.) Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: (S.) Tom McMurray, Secretary (Seal).

Central Surety and Insurance Corporation, Home Office, Kansas City 10, Missouri.

Know all men by these presents:

That Central Surety and Insurance Corporation, in pursuance of authority granted by Article III, Section 12, of the By-Laws of the said Corporation, which said section has not been amended nor rescinded and of which the following is a true, full and complete copy:

"The President or any Vice-President, may appoint Resident Vice-Presidents and Resident Assistant Secretaries and Attorneys-in-Fact in any State or Country to represent and act on behalf of the Company, but only within the scope of the authority granted to them in writing; and any such Resident Vice-President, Resident Assistant Secre-
[fol. 169] tary or Attorney-in-Fact may be removed and the authority granted him revoked at any time, by the President or any Vice-President, the Board of Directors or the Executive Committee."

does hereby nominate, constitute and appoint: J. Frank Murphy, Oklahoma City, Oklahoma, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver for and on its behalf, as surety: Supersedeas bond on behalf of Natural Gas Pipeline Company of America, in favor of the State of Oklahoma, required in connection with appeal from order of the Corporation Commission of the State of Oklahoma in Cause CD No. 3048 in the Matter of the Application of Panoma Corporation for a Clarification of order No. 19514 and for an order of this Commission Directing the Action to be taken by the applicant and Natural Gas Pipeline Company of America under and Pursuant to said

order, in penalty not exceeding one million five hundred thousand and no/100 ($1,500,000.00) dollars.

And the execution of such bonds or undertakings, in pursuance of these presents, shall be as binding upon [fol. 170] the said Corporation, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the said Corporation at its office in Kansas City, Missouri, in their own proper persons.

All authority hereby conferred shall expire and terminate without notice at midnight of May 1, 1952.

In witness whereof, Central Surety and Insurance Corporation has caused these presents to be signed by its Vice-President and its corporate seal to be hereto affixed this 12th day of June, 1951.

Central Surety and Insurance Corporation, by R. A. Hubbard, Vice-President.

Attest: W. R. Chappelow, Assistant Secretary (Seal).

STATE OF MISSOURI,

County of Jackson, ss:

On this day, before the subscriber, a Notary Public of the State of Missouri, in and for the County of Jackson, duly commissioned and qualified, came the above named [fol. 171] Vice-President of Central Surety and Insurance Corporation, to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposeth and saith, that he is the said officer of the Corporation aforesaid, and the seal affixed to the preceding instrument is the corporate seal of the said Corporation, and that the said corporate seal and his signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the City of Kansas City, this 12th day of June, 1951.

Pearl Pape, Notary Public (Seal).

My Commission expires January 5, 1952.

I, the undersigned, Assistant Secretary of Central Surety and Insurance Corporation, do hereby certify that the original Power of Attorney, of which the foregoing is a fully, true and correct copy, is in full force and effect.
[fol. 172] In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the Corporate seal of the Corporation, this 13th day of June, 1951.

(S.) W. R. Chappelow, Assistant Secretary (Seal).

Form 2507-N—Copy (Rev. 3-47).

(Endorsements) Filed June 13, 1951. Secretary, Corporation Commission of Oklahoma.

[fols. 173-183] BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

EXHIBITS 1 TO 6 OMITTED IN PRINTING

Exhibit 1 is the copy of the original Application in this cause, and, since said original Application is hereinbefore copied in this record and indexed, to avoid duplication and encumbering the record the same is not again copied at this point.

[fol. 184] BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

NOTE RE EXHIBIT 7

Exhibit 7 is a copy of the RESPONSE OF NATURAL GAS PIPE LINE COMPANY OF AMERICA, filed herein, which Response is copied in full in this record and indexed; therefore, the same is not again copied at this point.

[fols. 185-186]

EXHIBIT 8

Revised Receivable— Natural Gas Pipe Line Company
Under
Oklahoma Corporation Commission Price Orders

1	2	3	4	5	6	7	8
Period 1948	Pipe Line and Fuel Volume 14.65#	Panoma Fuel & Shrink at 14.65#	Total Inlet at Comp. Sta.	Value at 7¢	Payment	Additional Amount Due	6% Interest to 2-28-51
August	216	–0–	216	$ 15.12	$ 11.58	$ 3.54	$ .51
September	2,374	–0–	2,374	166.18	127.26	38.92	5.45
October	52,056	–0–	52,056	3,643.92	2,901.09	742.83	100.28
November	1,505,891	97,950	1,603,841	112,268.87	80,922.99	31,345.88	4,074.96
December	2,361,879	151,800	2,513,679	175,957.53	127,044.86	48,912.67	6,114.08
	3,922,416	249,750	4,172,166	292,051.62	211,007.78	81,043.84	10,295.28
1949							
January	2,902,672	193,445	3,096,117	216,718.19	155,910.58	60,817.61	7,298.11
February	2,414,659	90,403	2,505,062	175,354.34	129,376.73	45,977.61	5,287.43
March	2,679,108	103,115	2,782,223	194,755.61	147,443.60	47,312.01	5,204.32
April	2,571,836	111,111	2,682,947	187,806.29	140,767.10	47,039.19	4,939.11
May	2,677,495	120,131	2,797,626	195,833.82	146,257.92	49,575.90	4,957.59
June	2,587,429	111,906	2,699,335	188,953.45	121,487.03	47,466.42	4,509.31
July	2,667,632	113,409	2,781,041	194,672.87	146,148.57	48,524.30	4,367.19
August	2,622,156	133,453	2,744,609	192,122.63	142,802.46	49,320.17	4,192.21
September	2,482,019	158,142	2,640,161	184,811.27	133,512.62	51,298.65	4,103.89
October	2,566,715	171,776	2,708,591	191,694.37	137,421.24	54,273.13	4,070.48
November	2,824,185	182,275	3,006,160	210,452.20	150,964.82	59,487.38	4,164.12
December	2,618,543	186,703	2,805,246	196,367.22	140,037.06	56,330.16	3,661.46
	31,614,449	1,664,869	33,279,018	2,329,552.26	1,712,129.73	617,422.53	56,755.22

97

1950							
January	2,745,828	188,835	2,934,663	205,426.41	146,621.43	58,804.98	3,528.30
February	2,402,846	157,763	2,560,609	179,242.63	128,191.38	51,051.27	2,807.82
March	2,678,276	150,975	2,829,251	198,047.57	145,208.99	52,838.58	2,641.93
April	2,545,512	133,892	2,679,404	187,558.28	140,587.95	46,970.33	2,113.66
May	2,643,888	145,757	2,789,645	195,275.15	144,573.24	50,701.91	2,028.08
June	2,559,516	129,257	2,688,773	188,214.11	140,444.23	47,769.88	1,671.95
July	2,506,741	117,265	2,623,006	183,680.42	136,979.11	46,701.31	1,401.04
August	2,595,411	151,780	2,747,191	192,303.37	139,223.07	53,080.30	1,327.01
September	2,561,677	160,307	2,721,984	190,538.88	137,104.22	53,434.66	1,068.69
October	2,658,040	153,368	2,811,408	196,798.56	142,501.01	54,297.55	814.46
November	2,508,016	162,222	2,670,238	186,916.66	134,231.08	52,685.58	526.86
December	3,278,024	205,652	3,483,976	243,878.32	175,720.54	68,157.78	340.79
	31,684,075	1,857,073	33,541,148	2,347,880.36	1,711,386.23	636,494.13	20,270.59
1951							
January	3,291,225	226,128	3,517,353	246,214.71	175,380.73	70,833.98	–0–
Grand Total	70,512,165	3,997,820	74,509,985	$5,215,698.95	$3,809,904.47	$1,405,794.48	$87,321.09

[fol. 186] EXHIBIT 9

Gas Purchase Contract Between Natural Gas Pipeline Company of America and Harrington & Marsh

Dated as of December 1, 1946

[fol. 187] GAS PURCHASE CONTRACT

This Gas Purchase Contract made as of December 1, 1946, by and between Natural Gas Pipeline Company of America, a Delaware corporation having offices at 20 North Wacker Drive, Chicago 6, Illinois, herein called "Natural", and D. D. Harrington, Stanley Marsh, Jr., Estelle Fariss Marsh, T. J. Wagner, Jr., Ida D. Marsh, and Isabel Marsh McCormick, joined by her husband, Jas. L. McCormick, and joined herein by Stanley Marsh, Jr., Independent Executor of the Estate of Stanley Marsh, deceased, both jointly and severally, said parties comprising the partnership doing business under the firm name of Harrington & Marsh, all residents of Amarillo, Texas, all or any of whom may be addressed at Amarillo Building, Amarillo, Texas, herein called "Sellers",

Witnesseth

That in consideration of the mutual covenants hereof, the parties agree as follows, to-wit:

Article First

Situation and Purpose of Parties

1. Natural is the owner of a natural gas transportation system originating near Gray, Oklahoma, and terminating near Joliet, Illinois, with a trunk lateral line traversing northern Illinois. By means of said system it transports natural gas and sells and delivers the same for consumption in the great Chicago metropolitan area and other [fol. 188] localities, and may make deliveries for consumption in additional areas. Its system is integrated with a natural gas transportation system owned by Texoma Natural Gas Company, herein called "Texoma", which system originates in the Panhandle gas field of Texas and

connects with the origin of Natural's pipeline system. Natural receives from Texoma's transportation system all gas presently transported and sold by it. Natural and Texoma are now engaged, under authorization from Federal Power Commission heretofore issued to them, in enlarging their respective transportation systems so that the integrated system will require on days of operation at maximum capacity an intake of approximately three hundred forty million (340,000,000) cubic feet of gas per day, measured as in Article Twelfth provided. Natural and Texoma have made application to the Federal Power Commission for a certificate of convenience and necessity permitting them to additionally enlarge such integrated system, so that same will require an intake of approximately four hundred seventy million (470,000,000) cubic feet of gas per day; and intend, if permitted by certificate satisfactory to them obtained, to construct additional facilities to obtain such additional enlargement of such integrated system. The construction of such additional facilities is herein referred to as the "proposed expansion". Natural desires to obtain from Sellers that proportion of its total system requirements of gas specified in Article Third hereof. The proposed expansion contemplates, among other things, the construction of a pipeline connecting Natural's pipeline system at its present Station 2 near Gray, Oklahoma, with the gas reserves of Sellers hereinafter referred to, and the installation at or near the intake terminal of said pipeline of a compressor station and appurtenances, herein referred to as "Station 1", for the compression of gas to be received from Sellers; all of such [fol. 189] facilities adequate for handling seventy-six million (76,000,000) cubic feet of gas per day.

2. Sellers represent that they own leasehold estates, mineral interests, lands, gas purchase contracts or other property rights covering in excess of seventy-eight thousand (78,000) acres of land in Texas County, Oklahoma, and in what is referred to by the Oklahoma Corporation Commission as the Guymon-Hugoton field, which vest in them the right to produce gas from such lands upon satisfaction of the covenants of such grants, as long as gas may be produced therefrom. Such rights, the lands covered

thereby, and/or the gas deposits underlying said lands, as the sense may best indicate, are herein referred to as "gas reserves". A detailed description of the instruments creating such gas reserves and the lands covered thereby is attached hereto and marked "Exhibit A". A map showing the location of the gas reserves in relation to the sections and townships in Texas County, Oklahoma, is attached hereto and marked "Exhibit B". Sellers desire to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells to said Station 1, and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract. They desire, and will undertake, to remove certain constituents of the gas to be delivered, after its compression by Natural at Station 1, and for that purpose intend to construct a gasoline plant and dehydration plant on the pipeline to be constructed by Natural, on the discharge side of said Station 1.

[fol. 190] Article Second

Initial Activities

1. Natural and Texoma have made application to the Federal Power Commission for the proposed expansion, and Natural agrees to prosecute and to cause Texoma to prosecute said application with due diligence. Should they be unable to secure such certificate or be able to obtain it only with conditions not acceptable to them on or before June 1, 1947, Natural shall promptly notify Sellers, and this contract shall then terminate.

2. Sellers shall, within thirty (30) days after Natural's prompt request, exhibit to Natural such evidence of their title to their gas reserves as shall in the opinion of counsel for Natural show that they are the lawful owners thereof and of the rights therein herein described, and are in a position to dedicate such reserves to the use of this contract. Should, in the opinion of Natural's counsel, Sellers fail to exhibit such title to substantially all of the

gas reserves described, Natural may at its option terminate this contract.

3. If and when Natural and Texoma shall have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion within the above specified time limit, on terms satisfactory to them, Natural shall proceed and shall cause Texoma to proceed with due diligence, the availability of materials and other uncertain factors considered, to complete the proposed expansion, and as part thereof shall complete its Station 1, and a pipeline therefrom to its Station 2. Said station shall be located within 1 mile from the center of Section 7, Township 4 North, Range 17 East, in Texas County, Oklahoma unless the parties mutually agree otherwise. [fol. 191] Natural shall so arrange its pipeline facilities that the gas may, after compression at said station, be delivered to the gasoline and dehydration plants of Sellers in Article Fifth hereof specified, and then passed through a metering station in Article Twelfth described, which metering station shall be located on the discharge side of said plants.

4. It is contemplated that some of the increment in capacity to be obtained by the proposed expansion may be available before the entire construction is completed. Upon the granting and acceptance of a certificate of public convenience and necessity upon the application above referred to, Natural shall notify Sellers thereof of the probable date of initial delivery hereunder, and at the same time shall advise them of its best estimate of the quantity of gas which it desires to then have available for delivery hereunder. Sellers shall proceed with due diligence to drill gas wells, install gathering lines, construct the gasoline and dehydration plants herein described, provide all other facilities, and do all other things and acts necessary to make available for delivery hereunder at such date of initial delivery the quantities of gas so estimated, the availability of materials and all physical and legal restrictions on production considered. As the work on the proposed expansion continues, Natural shall from time to time notify Sellers of its estimates of any additional quantities of gas required to be available hereunder, in each case at

the end of one year from the date of the notice, and Sellers shall thereupon install such additional facilities and do all acts and things as may be necessary to increase the deliveries at the end of the named period by the quantity so estimated; all within the maximum daily quantity required by this contract.

[fol. 192] Article Third

Quantities of Gas to be Delivered

1. Sellers agree to sell and deliver to Natural and Natural agrees to purchase and receive from Sellers, subject to the limitations herein expressed, such quantities of gas as shall average daily, as nearly as is practicable in good operation seventy-six million (76,000,000) cubic feet per day and, in addition, any quantities of gas used for compressor station operation as provided in Article Fourth hereof. The obligation of Natural to purchase and Seller to deliver such quantities of gas shall commence not later than eighteen months after Natural and Texoma have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion, on terms satisfactory to them, provided materials for such expansion are available to enable them to complete such construction within the eighteen months period; otherwise, as soon as the availability of materials shall permit the completion of the proposed expansion. Any variations in deliveries from said daily quantity shall be adjusted by Buyer currently and as soon as practicable. Prior to the completion of the proposed expansion, the quantities to be delivered hereunder shall be limited to the quantities which Natural may desire to take within the quantities stated in the notices provided by Article Second, Paragraph 4, hereof.

2. The obligation of Sellers to deliver Natural such quantities hereunder shall be limited to the quantity of gas which can be legally produced from the gas reserves less the quantity of gas excepted and reserved hereunder for the development and operation of Sellers' leaseholds and plants. Should any law or any rule or regulation of any state or Federal authority having jurisdiction require

[fol. 193] Natural to purchase a portion of such quantities from other than Sellers in said Guymon-Hugoton field, or shall make it necessary for Natural to do so in order to obtain such quantities, the quantity of gas otherwise to be delivered by Sellers hereunder shall be reduced by the quantity of gas Natural is so required to purchase during the time that Natural is so required. Natural may obey any such law, rule or regulation without legal contest.

Article Fourth

Delivery and Pressure

Sellers shall deliver gas hereunder into the custody of Natural and Natural shall first receive the custody of same, at the intake side of its Station 1, at a gauge pressure of not less than 150 pounds per square inch. The gas shall be compressed at said station by Natural according to the operating practice which it may from time to time follow, but not in excess of a gauge pressure of 800 pounds per square inch. Natural shall, after compression, then re-deliver said gas to Sellers' gasoline plant at an average daily temperature not in excess of 95° F. and shall use all reasonable effort to keep such gas free from compressor lubricating oil. Sellers shall be entitled to all hydrocarbons removed from the gas by such compression provided the collecting thereof be at their sole cost and risk. Sellers shall, after treatment at their gasoline and dehydration plants, re-deliver the gas into Natural's pipeline at the outlet of said plants at a temperature within 5° F. of a temperature at which the gas is received by Sellers at the inlet of said plants, provided Sellers shall not be required to reduce the temperature of such gas below 70° F. A metering station to be installed and operated by Natural as provided in Article Twelfth hereof shall be located near [fol. 194] the outlet of said plants at which point title to the gas shall pass to Natural; except, the gas required by Natural for its compressor station operation shall be metered separately at a point at or near said station and title thereto shall pass to Natural as used. Such gas so used for compressor station operation by Natural shall be assumed and agreed for purposes of measurement and

payment hereunder to have a flowing temperature in the meter of 60° F. and a total heating value of nine hundred sixty-five (965) British thermal units per cubic foot.

Article Fifth

Gasoline Plant Operation

1. Sellers reserve the right, subject to the limitations in this Article specified, to extract from the gas to be delivered hereunder nitrogen, helium, and also natural gasoline, butane, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents; and Sellers shall remove certain constituents from the gas; all as hereinafter provided.

2. Sellers shall, prior to the first delivery of gas hereunder, construct at a proper location approximately one mile from Station 1 an absorption type gasoline plant and a dehydration plant for the recovery of constituents to be removed from the gas delivered hereunder, which plants shall be adequate for the treatment of seventy-six million (76,000,000) cubic feet of gas per day. Sellers shall at all times maintain said plants in good repair and operating efficiency, and shall restore the same or any part thereof which may be destroyed or otherwise become inefficient.

[fol. 195] 3. In the operation of said gasoline and dehydration plants, Sellers shall:

(a) Reduce the pressure of the gas between the inlet and the outlet of the plants by no more than is necessary for their efficient operation, and in no case more than fifteen (15) pounds per square inch.

(b) Conform their operations to the requirements of the efficient compression and transportation by Natural of gas delivered hereunder, to the full extent same may be accomplished without undue burden on the operation of said plants.

(c) Remove from the gas treated all hydrocarbons and water necessary to produce a dew point of the treated gas which shall not exceed a temperature of

twenty-five (25) degrees Fahrenheit at a gauge pressure of not more than seven hundred eighty-five (785) pounds per square inch, in order that the formation of hydrates and/or the condensation of hydrocarbons will not occur in Natural's pipeline system.

(d) Refrain from permanently removing hydrocarbons from the gas to the extent that their removal may reduce the heating value of the gas below nine hundred fifty (950) British thermal units per cubic foot.

4. The parties agree that the proper operation of said gasoline and dehydration plants is essential to the preparation of the gas for its efficient transportation. Should Sellers fail to operate said gasoline and dehydration plants in the manner herein required, Natural may, as often as such default may occur, enter upon the premises where said plants are located, take possession of said premises, plants and all appurtenances, place and maintain the same in adequate repair and operating condition, install any equipment or additions thereto required for efficient operation, and thereafter operate the same, all according to its own judgment and discretion. In such event it may market or otherwise dispose of all products recovered as if [fol. 196] the owner thereof according to its discretion, but shall account to Sellers for the receipts thereof, if any. Sellers shall on demand pay Natural all expenses in Natural's judgment reasonably applicable to such activities, and in addition a supervising charge of ten per cent (10%) above all such expenditures, together with interest at the rate of six per cent (6%) per annum on all amounts not paid when due; and such charges against Sellers shall be a lien on such plants, their appurtenances, and the real estate where located, and the proceeds, if any, received by Natural for the products produced, and shall be deductible against any sums payable for gas delivered hereunder. Natural may continue such operation until it has received assurance from Sellers satisfactory to it that the said plants will thereafter be operated as herein provided.

Article Sixth

Price and Payment

1. For all gas delivered hereunder Natural shall pay to Sellers an amount calculated on the following prices per one thousand (1000) cubic feet, metered as in Article Twelfth herein provided; that is:

(a) Until the first day of July, 1951, six cents (6¢),

(b) During the five-year period commencing July 1, 1951, seven cents (7¢),

(c) Commencing July 1, 1956, and for the remaining term of this contract, eight cents (8¢).

2. During any day when the gas delivered contains on the average nine hundred sixty (960) British thermal units, or more, per cubic foot, measured as in Article Eleventh provided, the price determined as in Paragraph 1 of this Article shall be increased or decreased in direct proportion as such British thermal unit content varies [fol. 197] from nine hundred sixty-five (965) units per cubic foot; during any day when the gas delivered contains on the average less than nine hundred sixty (960) and more than nine hundred fifty (950) British thermal units per cubic foot, such price shall be reduced by ten per cent (10%); during any day when the gas delivered contains on the average nine hundred fifty (950), or less, British thermal units per cubic foot, and is accepted by Natural, such price shall be reduced by twenty per cent (20%).

3. Sellers shall pay all ad valorem taxes on their gas reserves and properties and all present gross production taxes, severance taxes and other excise taxes upon or in respect to the gas delivered hereunder up to the point of delivery of the gas to Natural. All increases in taxes due to increases in the rates of such present gross production taxes, severance taxes, and excise taxes upon or in respect of the gas delivered hereunder or the production, transportation or handling thereof up to the point of delivery of the gas to Natural shall be borne one-half by Sellers and one-half by Natural; *provided, that all excise taxes*

upon or in respect of the manufacture or recovery of hydrocarbons by Sellers shall be borne by Sellers.

4. Natural shall render to Sellers on or before the tenth day of each month a statement showing the total quantity of gas received into the integrated pipeline system of Natural and Texoma and the quantities of gas delivered hereunder by Sellers on each day during the calendar month next preceding, the average British thermal unit content of the gas delivered by Sellers each day of such calendar month, and shall accompany such statement with the applicable charts and such other data obtained or used by Natural for the preparation of such statement. Sellers shall within five (5) days after receipt of such statement render to Natural an invoice for the gas delivered here-[fol. 198] under during such calendar month and shall at the same time return to Natural all charts and data delivered to them with Natural's statement. Natural shall pay Sellers for the gas delivered during such calendar month within ten (10) days after receipt of invoice; and upon failure so to do, interest thereon shall accrue at the rate of six per cent (6%) per annum. If Natural should fail to pay any amount due hereunder, to the extent same is not in bona fide dispute, for a period of sixty (60) days after its due date, Sellers may suspend deliveries of gas hereunder until such payment is made. Any statement or invoice shall be subject to correction within one (1) year after payment made by Natural for gas delivered during any calendar month, but if claim for correction is not made within that time, such statement and invoice shall become final as to both parties.

5. Natural may at its option make payment of any sum/s due hereunder by depositing same in the First National Bank and Trust Company of Oklahoma City, Oklahoma, to the credit of Harrington & Marsh and such deposit/s shall fully acquit Natural, irrespective of ownership or any change in ownership, of the rights hereunder of Sellers or any of them; provided, however, Sellers may on authorization in manner and form acceptable to Natural direct such payment/s to be made otherwise.

Article Seventh

Obligation of Sellers to Develop Gas Reserves and Provide Facilities for Delivery

Sellers agree that pursuant to the notices outlined in Article Second hereof, and thereafter during the continuance of this contract, they will, to the full extent required by prudent operation diligently develop the gas reserves, [fol. 199] drill gas wells thereon, install necessary gathering systems, booster stations, equipment, property and appurtenances for the gathering and delivery of gas, from time to time acidize or otherwise treat their gas wells to the extent necessary to obtain the fullest possible production therefrom, if necessary provide facilities to condition the gas produced to meet the requirements of this contract, continuously maintain their gas wells, pipelines, and all their property in good operating condition and operate the same with due diligence; all to the extent necessary to maintain at all times sufficient open flow in such wells and adequate capacity in pipelines, gasoline and dehydration plants and other properties so that Sellers will be able to deliver to Natural from said gas reserves according to the provisions of this contract, the availability of materials and all physical or legal restraints on production and sale considered, seventy-six million (76,000,000) cubic feet of gas per day; except that pending completion of the proposed expansion Sellers shall be required to maintain available for delivery no greater quantities of gas than those specified in notices given pursuant to Paragraph 4 of Article Second hereof.

Article Eighth

Remedy for Failure to Make Deliveries

1. "Day" shall be taken to mean the twenty-four (24) hour period commencing at eight o'clock A. M., Central Standard Time.

2. Should Sellers from causes not excused by the provisions of Article Fifteenth hereof or attributable to the inability of Natural to receive Sellers' deliveries, fail on

as many as seven (7) days (which need not be consecutive) during any thirty (30) day period to deliver the quantities [fol. 200] of gas required to be delivered by it under the provisions of Article Third hereof. Natural may, as often as such situation occurs and without waiver from prior indulgence and without prejudice to other remedy, at its option to be exercised within ninety (90) days after such occurrence, give notice to Sellers that it elects to reduce during the remaining term of this contract the quantity otherwise required to be delivered by a stated quantity per day, which shall not be more than the maximum quantity of the deficiency occurring during any twenty-four (24) hour period, and thereafter the quantities otherwise to be delivered hereunder shall be reduced by such quantity per day. Provided, however, should Sellers be prevented from delivering the quantities of gas required to be delivered hereunder by reason of any law in the nature of a proration or common purchaser law, or any regulation thereunder, such reduction of the quantities otherwise to be delivered hereunder by a stated quantity per day shall not exceed the daily average deficiency during said thirty (30) day period.

Article Ninth

Gas Reserves

1. Sellers agree that during the term of this contract they will do and perform all acts and things within reason which are necessary to continue in force, renew and maintain their ownership of the gas reserves and their exclusive right to produce gas therefrom. Provided that Sellers may abandon any gas leaseholds or other estates or rights covering portions of the gas reserves, where the land covered thereby in their judgment has been condemned by development, and may abandon any producing leasehold which may no longer be operated at a profit; conditioned, however, that Sellers shall first in writing offer, at least [fol. 201] ninety (90) days prior to any such abandonment, to sell, convey and assign to Natural the gas rights held by them in and to the lands, together with any gas wells and appurtenant equipment thereon, the gas rights to which are proposed to be abandoned, at the salvage value of such gas

wells and appurtenant equipment, if any, in place. Should Natural elect to accept said offer within thirty (30) days after receiving same, such property shall be transferred to Natural accordingly.

2. Sellers shall, for the purpose of consolidating the gas reserves into better operating position, have the right to exchange portions of the present gas reserves for other acreage of like area and productive quality situated within the area outlined and designated "Approved Area" on the map attached hereto and marked Exhibit "B." Upon such exchange Sellers shall prepare, execute and forward to Natural in duplicate, for its execution, a suitable written instrument in recordable form, which Natural will execute and return one Copy to Sellers, which instrument by its terms shall release *from the lien of dedication* hereunder the dedicated acreage so exchanged and impress with the *lien of dedication the substituted acreage acquired to the same extent as if originally part of the gas reserves.*

3. Sellers may at their option by notice to Natural acquire and dedicate to the users of this contract any other gas leases, gas purchase contracts, or gas rights covering lands situated within the area outlined and designated "Approved Area" on the attached map; and thereupon such additional acreage shall become subjected to all the terms of this contract.

4. The parties contemplating that the gas which may be produced from the gas reserves will be no more than sufficient to assure, after deduction of quantities thereof used for lease and gasoline plant and compressor plant [fol. 202] operation, the deliveries of gas required under this contract, for the purpose of preserving the gas underlying said gas reserves for such deliveries, *Sellers agree that they will, during the term of this contract, dedicate the gas reserves to the purpose of the contract,* and will not sell or deliver gas produced from the gas reserves to any person other than Natural; except:

(a) Until Natural shall have commenced acceptance hereunder of the quantities of gas to be purchased by it as provided in Article Third hereof, Sellers, in order to keep their leaseholds in force and

prevent drainage of gas from their gas reserves, shall have the right to sell and deliver gas therefrom to others than Natural.

(b) Sellers shall during any period when the production of gas from their gas reserves is subject to or limited by any law in the nature of a proration or ratable take law, or any regulation or order thereunder, have the right to sell to others than Natural any amount of gas prorated to or allowed Sellers' wells in excess of the amount of gas Sellers are currently required to deliver to Natural hereunder.

(c) Sellers also reserve the right to use all gas required for the development and operation of their leaseholds and their said plants, together with such gas reserved by lessors for domestic usage under the provisions of Sellers' leases and unitization agreements.

5. Should Sellers be unable to produce the quantities of gas required to be delivered hereunder from their gas reserves by reason of either the physical limitations of their wells located thereon or legal restrictions resulting from a proration or ratable take law, or any regulation or order thereunder, Sellers shall have the preferential right to supplement the quantities which can be physically and legally produced from their reserves by the purchase of gas from others for redelivery hereunder to the extent [fol. 203] necessary to enable Sellers at all times to deliver Natural that proportion of its total system requirements of gas specified in Article Third hereof.

6. It appearing that Natural contemplates the expenditure of large sums of money in the construction of pipelines to Sellers' gas reserves, and because of such expenditure and because the nature of its business requires assurance that the gas reserves of Sellers shall be continuously available to Natural during the entire period of this contract, the parties agree: that the provisions hereof shall be deemed covenants running with such gas reserves and the property and all interests of Sellers used or useful for the satisfaction by Sellers of the provisions of this contract to be by them performed, and shall follow the

ownership of same in any hands; that Natural shall be deemed to have acquired by this contract an equitable title in the said gas reserves and property to the extent necessary to preserve and obtain said gas for the satisfaction of the obligations of Sellers under this contract; and that this contract and all its provisions shall be subject to specific performance or any other applicable remedy.

Article Tenth

Quality of Gas

1. The gas delivered hereunder at the metering equipment of Natural shall, subject to the standards in this contract expressed, be natural gas as produced in its natural state, except: that Sellers shall treat the gas for recoverable constituents as in Article Fifth hereof provided, and shall, if necessary, treat such gas in order to bring it within the standards of purity hereinafter in this Article expressed.

[fol. 204] 2. Said gas:

(a) shall be commercially free from solid and/or liquid matter, both at the metering equipment of Natural and at the point where it first enters the custody of Natural;

(b) shall, at the metering equipment of Natural, not contain more than one grain of hydrogen sulphide per one hundred (100) cubic feet, provided that this purity requirement shall be considered as satisfied if a strip of white filter paper, recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, be exposed to the gas for one and one half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging from a jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with the solution and not exposed to the gas;

(c) shall, at the metering equipment of Natural,

not contain more than thirty (30) grains of total sulphur per one hundred (100) cubic feet;

(d) shall, at the metering equipment of Natural, meet the requirements of subparagraph 3(c) of Article Fifth;

(e) shall, at the metering equipment of Natural, contain at least nine hundred fifty (950) British thermal units per cubic foot, measured as in Article Eleventh hereof provided, except as Natural may at its option accept gas of less content.

3. The sulphur and hydrogen sulphide content of the gas delivered by Sellers to Natural shall for the purposes hereof be determined by tests made or caused to be made by Natural as often as it may desire, of samples of gas taken from the gas stream from which deliveries are made, at or near the point of measurement.

4. Should such tests of the gas disclose the presence of [fol. 205] sulphur or hydrogen sulphide in excess of the amounts above specified:

(a) Sellers shall immediately discontinue deliveries hereunder from their wells known or found to produce gas which does not meet such tests, and progressively substitute for such deliveries gas from other suitable wells until a satisfactory test be obtained.

(b) If, after the procedure in the foregoing subparagraph (a) has been followed, tests of the gas continue to disclose the presence of sulphur or hydrogen sulphide in excess of the amounts in this Article permitted, Sellers shall remove all excess sulphur and hydrogen sulphide content by the installation and operation of facilities adequate for such purification.

(c) Natural may, without prejudice to any other remedy, upon advising Sellers of its intention so to do, refuse to accept further deliveries of gas from Sellers hereunder until such time as the gas at the point where samples are taken for testing shall conform to the foregoing sulphur and hydrogen sulphide content requirement.

5. Natural shall have the right to inspect and make copies of all reports and "test data" of Sellers in respect to any test made by Sellers on any of their wells. Natural shall, at its option and as often as it desires, be permitted to test any well of Sellers to determine the characteristics of the gas produced.

6. Should the gas offered for delivery by Sellers fail at any time to conform to any of the specifications in Paragraph 2 of this Article (other than subparagraph (e) thereof), Natural may at its option, and in addition to other remedy, accept delivery of the gas and itself remove any solid matter, liquid matter, hydrogen sulphide and/or sulphur in any form in excess of the amounts specified, and Sellers shall reimburse Natural for any reasonable expense incurred by Natural in effecting such removal, or for any reasonable expense otherwise incurred by Natural [fol. 206] by reason of the failure of the gas to conform to such specifications, all with interest at the rate of six per per cent (6%) per annum, and Natural may deduct the amount of all such expense from any sums payable for gas delivered hereunder.

Article Eleventh

British Thermal Unit Content

1. The unit of volume for heating value determination (British thermal unit content) shall be one (1) cubic foot of dry natural gas at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch.

2. The average total heating value per cubic foot of the natural gas delivered hereunder for each day shall be determined by means of a Thomas recording calorimeter to be installed at or near the point of measurement by Natural. Such determination of the average total heating value shall be made by averaging the readings recorded for each day and the average thus obtained shall be the average total heating value per cubic foot delivered during such day. The accuracy of the Thomas recording calorimeter shall be checked at least once a week by means of a proof test of pure hydrogen gas, or by means of a

test of a standard sample of natural gas, or by means of a Junkers type of flow calorimeter operated according to the method of the United States Bureau of Standards, as may be selected by Natural. The Thomas recording calorimeter shall be deemed operating properly when the total heating value as recorded by it does not vary from the total heating value of pure hydrogen gas, or from the total heating value of a standard natural gas, or from the total heating value as determined by the Junkers calorimeter by more than five (5) British thermal units per cubic [fol. 207] foot, according to the test made. Provided that the Thomas recording calorimeter shall be immediately adjusted to register accurately should its recording show any variance from the total heating value determined by such tests. If at any time the Thomas recording calorimeter is out of service or not operating properly for any reason, determination of total heating value shall be made at least once daily by the Junkers calorimeter. Sellers shall have the right to examine the said calorimeter equipment and test records at any reasonable hour and to have a representative present at all tests and adjustments of such calorimeter equipment.

Article Twelfth

Metering—Unit of Volume

1. Natural shall furnish, install, operate and maintain metering stations, located as provided in Article Fourth hereof, properly equipped with orifice meters and recording gauges or such other type of meter or meters of standard make and design as may be mutually agreed upon, in such manner as to accomplish the measurement of gas delivered hereunder.

2. Sellers shall have access to said metering equipment at all reasonable times, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by the employees, agents or representatives of Natural. Charts and records from such metering equipment shall remain the property of Natural. Upon request of Sellers, Natural will submit to Sellers records and charts from such metering equipment subject to return by Sellers within ten

(10) days after receipt thereof, after which return the charts and records shall be kept on file for a period of five (5) years for the mutual use of both parties. At least once each month and on a date as near the first of the month as [fol. 208] practicable, Natural shall calibrate the said meters or cause the same to be calibrated in the presence of a representative of Sellers and the parties shall jointly observe any adjustments which are made in the meters should such adjustments be necessary. For purposes of measurement and meter calibration, the atmospheric pressure shall be assumed to be thirteen and two-tenths (13.2) pounds per square inch, irrespective of variations in natural atmospheric pressure from time to time. Natural shall give to Sellers notice of the time of all tests of meters sufficiently in advance of holding the tests so that they may conveniently have their representative present. If upon any test the metering equipment is found to be inaccurate by two per cent (2%) or more, but not otherwise, registrations thereof and any payments based on such registrations shall be corrected at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, but in case the period is not definitely known or agreed upon, then for a period extending back one-half of the time elapsed since the last day of calibration, not exceeding, however, fifteen (15) days. Following any test any metering equipment found inaccurate shall immediately be adjusted to measure accurately. If for any reason any meter/s are out of service and/or out of repair so that the quantity of gas cannot be ascertained or computed from the readings thereof, the quantity of gas delivered during the period same are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available using the first of the following methods which is feasible:

(a) By using the registration of any check measuring equipment of Sellers if installed and registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

[fol. 209] (c) By estimating the quantity of deliveries

by deliveries during preceding periods under similar conditions when the meter was registering accurately.

3. The unit of volume for the measurement of gas delivered under this contract shall be one (1) cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60°F.) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch, and the readings and registrations of the metering equipment herein provided for shall be computed in terms of such unit.

4. The temperature of the gas flowing through the meter shall be obtained by the use of a recording thermometer so installed that it will properly record such temperature. The average temperature recorded each day shall be used in computing measurements for that day.

5. The specific gravity of the gas shall be determined by Natural at or near the point of metering near the outlet of the gasoline plant at least semi-weekly, and the point of metering at the compressor station at least monthly. Natural shall advise Sellers of the time at which specific gravity tests are to be made in order that Sellers may conveniently have their representative present. The Edwards type specific gravity balance or equipment acceptable to both parties shall be used.

6. All fundamental constants, observations, records and procedures involved in determining and/or verifying the quantity and other characteristics of gas delivered hereunder shall, except as otherwise specified herein, be in accordance with such standards therefor as are or may hereafter from time to time be approved or recommended by the American Gas Association, and in the absence of such standards, then such standards as are acceptable to the parties hereto.

[fol. 210]

Article Thirteenth

Warranty of Title

Sellers hereby warrant title to the gas sold hereunder and the right of Sellers to sell the same and Sellers warrant that all such gas is owned by Sellers free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes and other taxes. Sellers

shall at all times have the obligation to make settlements for all royalties due and payments to the mineral and royalty owners under Sellers' leases as modified by any unitization agreements and other documents as may appear of record or otherwise be binding upon Sellers, and in accordance with the terms of the respective leases and to make settlements with all other persons having any interest in the gas sold hereunder, and Sellers agree to indemnify Natural and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title to the gas passes to Natural or which may be levied and assessed upon the sale hereof to Natural. In the event any adverse claim of any character whatsoever is asserted in respect to any of said gas, Natural may retain, as security for the performance of Sellers' obligations with respect to such claim under this section, the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined or until Sellers shall have furnished bond to Natural in an amount and with sureties satisfactory to Natural, conditioned for the protection of Natural with respect to such claim.

[fol. 210a] Article Fourteenth

Contract Subject to Laws and Regulations

This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation.

Article Fifteenth

Force Majeure Provisions

1. In the event of either party being rendered unable, wholly or in part, by force majeure applying to its/their operations, to carry out its/their obligations under this contract other than to make payment of amounts due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telephone to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

2. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earth-[fol. 210b] quakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs and/or alterations in machinery or lines of pipe, and any other cause whether of the kind herein enumerated or otherwise not within the control of the party claiming suspensions, all of which by the exercise of due diligence such party is unable to foresee or overcome.

Article Sixteenth

Arbitration

Should any dispute as to the construction of this contract or the respective rights, duties and obligations of the parties hereunder arise, the issues in dispute shall be arbitrated and determined by the person then the Senior Judge of the United States District Court for the Western District of Oklahoma, or, should he decline to act, such person/s, either one or three, as he shall, after hearing the suggestions of both parties, designate. Any arbitrator/s so appointed by the judge shall be qualified by

9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural [fol. 219] gas from a gas field, to-wit: the Guymon-Hugoton Oklahoma gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

16. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton Oklahoma gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

17. That Cities Service Gas Company, respondent, herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

education and training to pass on the issues in dispute; for example, if engineering questions are involved, qualified engineer/s shall be appointed, if legal questions are involved, qualified lawyer/s shall be appointed, or if the issues indicate, persons of varied training and education may be designated. Such judge or his appointees shall designate the procedure to be followed in the arbitration, which shall give both parties full opportunity to be heard. The determination by the arbitrator/s of the issues presented shall be final and conclusive, and the parties shall thereafter abide the decision made on such issues. Costs of any such arbitration shall be borne by the parties in equal proportions.

[fol. 210c]

Article Seventeenth

Option to Purchase

Sellers and each of them agree that as often as they or one of them shall receive a bona fide offer from a third party for the purchase in their entirety of either or all of the (a) gas reserves, (b) gas wells thereon, (c) pipe lines, (d) plants, and (e) other property at the time used or useful for the performance of this contract, and any rights under this contract, which offer Seller/s desires to accept, such Seller/s shall, before disposing of such interest, notify Natural by registered mail of the full particulars and terms of such offer, including the name of the party making the offer and the sum offered. Should Natural, within fifteen (15) days after receipt of such notice, advise such Seller/s of its desire to purchase the interest for which offer has been made, a contract for the sale and transfer thereof by such Seller/s to Natural on the same terms and conditions otherwise available to such Seller/s shall result, which contract shall be promptly executed.

Article Eighteenth

Miscellaneous Provisions

1. Each of the parties shall be responsible for any damage or injury to third parties or their property arising from

18. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was [fol. 220] thereafter a party in the case of *Oklahoma Natural Gas Company vs. State*, 161 Okla. 104, 17 Pac (2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

19. That the operation of the respondent, Cities Service Gas Company, constitutes it a transporter of natural gas.

20. A bona fide dispute has arisen between the applicant, Peerless Oil and Gas Company, a corporation, and respondent Cities Service Gas Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Sections 5 and 8, Township 4 North, Range 16 E.C.M. Texas County, Oklahoma.

21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Section 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of [fol. 221] 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas

the handling of the gas delivered hereunder during the period of its or their custody and possession.

2. Any communications or notices pertaining to this contract shall be considered as duly delivered when mailed by registered mail to the post office address of either of the parties hereto, as set out in this contract, or to such other address as either party shall designate by formal written notice.

[fol. 210d] 3. This contract may be assigned by either of the parties hereto to any person, firm or corporation who shall expressly assume the obligations hereof on the part of the assignor to be performed and, in the case of assignment by Sellers or one of them, who shall acquire all of the assignor's interest in gas reserves and properties of Sellers herein referred to; but it may not otherwise be assigned without the consent of the other party hereto. Whenever any party is referred to herein, such reference shall be deemed to include the successors and assigns of such party. Provided, however, that nothing herein contained shall be construed to prevent any party hereto from pledging all or any portion of such party's property as security under any mortgage, deed of trust, or other similar lien, or from pledging this contract or any benefits accruing hereunder to the party making the pledge.

4. The term "gas", wherever used herein, shall mean natural gas. The words "herein" or "hereunder" shall, whenever the sense properly permits, refer to all provisions of this contract, rather than to the provisions of any particular Article or its subdivision.

Article Nineteenth

Term

1. This contract shall, unless terminated before the commencement of deliveries hereunder according to the provisions of Article Second hereof, continue and remain in effect until January 1, 1965, and as long thereafter as Sellers are able to deliver gas in paying quantities under its terms and conditions; provided, however, that Natural may, on January 1, 1965, or the first day of any year thereafter, upon one (1) year's prior notice to Sellers, cancel and terminate this contract.

Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead, plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic [fol. 222] feet delivered into the pipelines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

23. The persons and corporations operating pipelines and transporting natural gas out of the Guymon-Hugoton Oklahoma gas field own or control a great portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton Oklahoma gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

[fol. 223] 24. There is no competitive market of natural gas in the Guymon-Hugoton Oklahoma oil field, but said market has been stifled by reason of the control of acreage and markets by the pipeline operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton Oklahoma Gas field at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

25. As a result of the controlled market, market prices,

[fol. 210e] 2. Should Sellers fail or be unable from any cause for a period of six (6) months to deliver to Natural at least twenty-five per cent (25%) of the volumes of gas required to be delivered by this contract. Natural may at its option give notice to Sellers of its intention to cancel this contract upon a stated subsequent date not earlier than two (2) years from the date of such notice, and this contract shall terminate on the date so fixed.

Executed the day and year first above written.

"Natural," Natural Gas Pipeline Company of America, By Floyd C. Brown, its President.

Attest: G. P. Garver, Secretary (Seal).

"Sellers," Harrington & Marsh, By (DDH) D. D. Harrington, (SM,Jr.) Stanley Marsh, Jr., (EFM) Estelle Fariss Marsh, (TJW,Jr.) T. J. Wagner, Jr., (IDM) Ida D. Marsh, (IMMcC) Isabel Marsh McCormick, (JLMcC) Jas. L. McCormick, (SM,Jr.) Stanley Marsh, Jr., Independent Executor of the Estate of StanleyMarsh, deceased.

[fol. 210f] State of Illinois,
Cook County, ss:

Before me, a Notary Public in and for said County and State, on this 5 day of December, 1946, personally appeared Floyd C. Brown, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year first above written.

Mary Barkyoumb, Notary Public in and for Cook County, State of Illinois (Seal).

My commission expires June 17, 1948.

measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton Oklahoma field and out of the State of Oklahoma at a price which is far less than its replacement value.

26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers and contracts providing for different prices, terms and conditions.

27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton Oklahoma gas field under contracts [fol. 224] containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

29. The operations of respondent, Cities Service Gas Company, constitute it a common carriers.

30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

32. The taking of natural gas from the Guymon-Hugoton Oklahoma field at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the [fol. 225] form of gross production taxes.

(e) Inequitable taking of natural gas from the common source of supply involved.

(f) Discrimination against various producers in the field.

33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent,

[fol. 210g] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared D. D. Harrington and T. J. Wagner, Jr., to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210h] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared Estelle Fariss Marsh and Ida D. Marsh, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210i] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared Isabel Marsh McCormick, joined by her husband, Jas. L. McCormick, to me known to be the identical persons who executed the within and foregoing

instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210j] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared Stanley Marsh, Jr., Individually and as Independent Executor of the Estate of Stanley Marsh, deceased, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the use and purposes therein set forth, and in the capacity therein stated.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210k] Exhibit "A"

Summary of Dedicated Gas Reserves

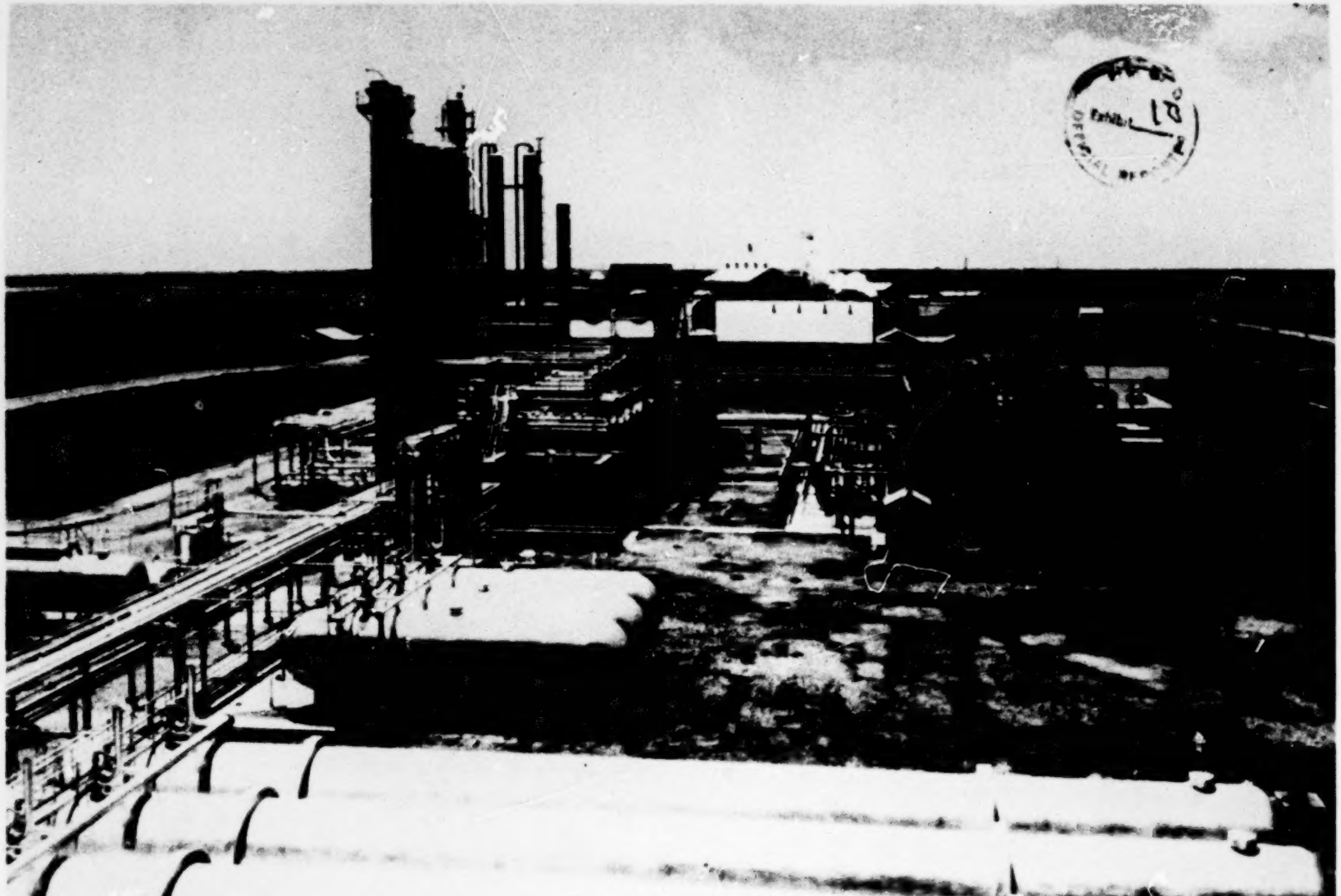
Gas Purchase Contract between Natural Gas Pipeline Company of America and Harrington & Marsh
Texas County, Oklahoma

	Acreage
Presently Developed Leaseholds	
23 Producing Gas Wells	14,720
Developed Leaseholds Under Contract	
5 Producing Gas Wells	3,200
Undeveloped Leases	60,152
Grand Total—Gas Reserves	78,072

"Immediately following the foregoing summary is a list of the tracts of land which constitute the 78,072 acres referred to in such summary."

Here follow 2 Photolithographs, Exhibits 10 and 11, folios 211, 212.)

EXHIBIT "10"



1268

EXHIBIT "11"

313

[fol. 213] EXHIBIT NUMBER 12

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054

Order No. 19514

Peerless Oil and Gas Company, a corporation, Applicant,

vs.

Cities Service Gas Company, a corporation, and all Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, Respondents.

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, Interveners.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on [fol. 214] the 26th day of November, 1945, at 10:00 o'clock, a.m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Prue, its attorney, the respondent Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners

presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

[fol. 215] Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

[fol. 216] 4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probable productive area of the Guymon-Hugoton pool in Texas

County, Oklahoma, covers part of the following described townships, to-wit:

Townships:		Ranges:
1	North	12 to 17 E.C.M.
1, 2, 3 and 4	North	12 to 18 E.C.M.
	and	
5 and 6	North	12 to 19 E.C.M.

which area may be extended by the drilling of additional wells.

5. Peerless Oil and Gas Company is the owners of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of [fol. 217] supply aforesaid, which oil and gas leases include leases covering

Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma,

and

Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

7. Cities Service Gas Company, respondent herein, is the owners of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant [fol. 218] has been drilled as aforesaid.

Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

ORDER

It is therefore ordered by the Corporation Commission [fols. 226-232] of the State of Oklahoma as follows:

1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the well head, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

2. This order shall be effective as of January 1st, 1947.

Done and performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary.

[fol. 233] EXHIBIT 14

Panoma Corporation Oklahoma Operations October 1, 1948 to December 31, 1950 Inclusive

Condensed Analysis of Actual and Projected Earnings

[fol. 234]

Panoma Corporation

Amarillo, Texas

Oklahoma Operations

Plant Products Income and Expense

Reference:	1948 3 Months	1949 12 Months	1950 12 Months	Total 27 Months
1. Gross Revenue from Plant Products	$278,938.12	$1,380,785.19	$1,308,682.02	$2,968,405.33
Expenses:				
2. Direct Plant Expense	$ 62,883.77	$ 243,800.02	$ 220,767.95	$ 527,451.74
3. Prod. and Gathering Expense	$ 14,278.80	$ 94,540.33	$ 91,104.86	$ 199,923.99
80% to Gathering	$ 11,423.04	$ 75,632.26	$ 72,883.89	$ 159,939.19
4. Taxes Other Than Income Tax	5,071.53	28,404.67	27,216.97	60,694.17
5. Discounts Allowed	386.97	6,136.37	2,553.13	9,076.47
6. Depreciation	52,459.62	283,901.11	286,006.24	622,366.97
7. Selling Expense	669.72	11,443.36	21,063.57	33,176.65
8. General and Administrative	$ 30,222.88	$ 80,179.33	$ 88,880.21	$ 199,282.42
85% to Plant	$ 25,689.45	$ 68,152.43	$ 75,545.18	$ 169,390.06
9. Miscellaneous Plant Plant Expense		807.00		807.00
10. Blending Stocks and Addatives			15,242.78	15,242.78
11. Processing Fee			4,135.01	4,135.01
Total Costs	$158,585.10	$ 718,277.22	$ 725,417.72	$1,602,280.04
Net Income	$120,353.02	$ 662,507.97	$ 583,264.30	$1,366,125.29

Summary

Total for 27 Months

M.C.F. Delivered	70,992,632
Gross Income from Extracted Products	$2,968,405.33
Gross Income per M.C.F.	$ .04181
Expense of Plant and Gathering	$1,602,280.04
Expense per M.C.F.	$ .02257
Net Income	$1,366,125.99
Net Income per M.C.F.	$ .01924

[fol. 235]

	Total Money	Net per M.C.F.
Residue Sales:		
Total M.C.F. Delivered: 70,992,632 M.C.F.	$3,634,523.74	$0.0512
Plant Products:		
Total M.C.F. Delivered: 70,992,632 M.C.F.	$1,366,125.29	$0.0192
Total Residue and Products:		
Total M.C.F. Delivered: 70,992,632 M.C.F.	$5,000,649.03	$0.0704

[fol. 236]

Analysis of Earnings Under Various Considered Factors

1. If Allowance Made for Interest Paid

Net Earnings admitted in preceding Computations		$5,000,649.03
Add Interest on Bank Debt		321,938.76
Earnings Required		$5,322,587.79
Basic M.C.F.		70,992,632
Yield per M.C.F. Required		$ 0.0750
Deficiency		$ 0.0046

2. If Allowed 6% Profit on Plant, Gathering System and Facilities

Net Earnings Admitted in preceding Computations		$5,000,649.03
Investment:		
Basic Plant	$3,108,672.97	
Lease Lines	406,766.03	
Gathering System	857,240.91	
80% of Remainder, Other than Lease Equipment	288,066.74	
Total	$4,660,746.65	
6% Profit 2¼ Years		629,200.80
Earnings Required		$5,629,849.83
Basic M.C.F.		70,992,632
Yield per M.C.F. Required		$ 0.0793
Deficiency		$ 0.0089

3. If Allowed 10% Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
10% Profit 2¼ years	1,048,668.01
Earnings Required	$6,049,317.04
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.0852
Deficiency	$ 0.0148

[fol. 237]

4. If Allowed 12.5% Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
12.5% Profit 2¼ Years	1,310,835.05
Earnings Required	$6,311,484.08
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.0889
Deficiency	$ 0.0185

5. If Allowed 16⅔ Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
16⅔% Profit	1,747,780.02
Earnings Required	$6,748,429.05
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.0951
Deficiency	$ 0.0247

6. If Allowed 20% Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
20% Profit	2,097,335.93
Earnings Required	$7,097,984.96
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.1000
Deficiency	$ 0.0296

[fol. 238]

References

1. Audit Reports, Exhibits "B", Line 2.
2. Audit Reports, Exhibits "B", supported in detail by Schedules of Audit reports as follows:
   - 1948 Schedule B-1
   - 1949 Schedule B-3, -1 Oklahoma
   - 1950 Schedule B-3, Column 2, Oklahoma
3. Audit Reports, Exhibits "B", supported in detail by Schedules of Audit Reports as follows:

1948 Schedule B-2	$ 14,278.80
1949 Schedule B-2-1, Oklahoma (Sub-Total)	94,540.33
1950 Schedule B-2, Column 2, Oklahoma	91,104.86
Gross Total	$199,923.99
80%	$159,939.1

Explanation of 80% Proration:

The only actual production expense incurred, other than that included and eliminated from General and Administrative expense, is well repair and conditioning and well testing. As practically no amount of well maintenance was incurred during this period only well testing is involved. It is considered that approximately $1,000.00 per month or $27,000.00 for the 27 months is chargeable against well testing which is less than 17% of total costs leaving 83% applicable to gathering and 80%, only, is used as being conservative.

4. Audit Reports, Exhibits "B", supported in detail by Schedules of Audit reports as follows:

1948 Schedule B–3 (Less Production Tax $10,724.10)
1949 Schedule B–6–1, Oklahoma
1950 Schedule B–5, Column 2, Oklahoma

5. Audit Reports, Exhibits "B".
6. Audit Reports, Schedules as follows:

1948 Schedule A–7
1949 Schedule A–4–Oklahoma
1950 Schedule A–4–Oklahoma

Charges for depreciation were allocated from figures shown on the audit report as follows:

[fol. 239]

		References			
		1948 3 Months	1949 12 Months	1950 12 Months	Total 27 Months
Total Depreciation Sustained		$60,820.48	$322,373.98	$325,809.35	$709,003.81
Extraction Plant	100%	$29,381.10	$182,577.04	$185,680.50	$397,638.64
Lease Lines	100%	4,964.36	23,267.53	24,483.13	52,715.02
Gathering System	100%	11,083.72	50,150.94	51,716.04	112,950.70
Sub-Total	100%	$45,429.18	$255,995.51	$261,879.67	$560,304.36
Remainder		$15,391.30	$ 66,378.47	$ 63,929.68	$145,699.45
Eliminate Lease Equipment		6,603.25	31,496.47	33,771.47	71,871.19
Balance–Miscellaneous		$ 8,788.05	$ 34,882.00	$ 30,158.21	$ 73,828.26
80% of Belance		$ 7,030.44	$ 27,905.60	$ 24,126.57	$ 59,062.61
Plus 100% Items Above		45,429.18	255,995.51	261,879.67	563,304.36
Total Included		$52,459.62	$283,901.11	$286,006.24	$622,366.97

7. Audit Reports, Exhibits "B".
8. Audit Reports, Exhibits "B" "General and Administrative" plus "Officers Salaries" which is the salary of employee designated as assistant secretary for the purposes of signing minor instruments. Supported is Detail by Schedules of Audit reports as follows:

1948 Schedule B–4
1949 Schedule B–5–1, Oklahoma
1950 Schedule B–5, Column 2, Oklahoma

Explanation of 85% Proration:

A detailed analysis was made of 1950 payrolls which are considered representative for the 27 months involved herein. 67 employees were paid a total of $257,662.37 and when classified according to work performed the following distribution was shown:

Plant and Pipeline	57	$206,516.02	88.57%
Production and Royalty	5	26,641.35	11.43%
Sub-Total	62	$233,157.37	100.00%
General Office	5	$ 24,505.00	Prorated

This discloses a ratio of 88.57% against 11.4% which has been further reduced to 85% to insure under-burden to plant costs.

9. Audit Report, Exhibit "B", 1949 (This is tank car rentals $789.10 plus filling station loss $17.90).
10. Audit Report, Exhibit "B", 1950 (Included as plant operating costs in Other Years).
11. Audit Report, Exhibit "B", 1950 (Premium paid for gas purchased and processed).

[fol. 240]

Exhibit 15

Before the Corporation Commission of the State of Oklahoma

Cause CD No. 1054

Order No. 19702

Peerless Oil and Gas Company, a corporation, Applicant,

vs.

Cities Service Gas Company, a corporation and All Operators Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, Respondents.

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, Interveners.

Report of the Commission

This cause came on for hearing before the Corporation Commission of the state of Oklahoma on the 31st day of January, 1947, at 1:30 o'clock p.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner,

sitting. R. M. Williams, Attorney of Bartlesville and Harry Turner, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent, Peerless Oil & Gas Company, and Floyd Green, Conserva-
[fol. 241] tion Attorney, appeared for the Commission.

After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 o'clock, p.m., for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral argument and being well and sufficiently advised in the premises, the Commission denied the application and therefore finds as follows:

FINDINGS

1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbers 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

2. That this Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that protests have been filed to the granting of the order.

3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbers 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

4. That order No. 19514 had for its purpose the fixing
[fol. 242] of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County,

Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger [fol. 243] percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent of approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or losses from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicatant to introduce proof showing wherein such hardship would occur.

5. That applicants complain that paragraph 1 of Order No. 19514 and paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic [fol. 244] feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Order Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utiliza-

tion and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore, in that respect applicant is already complying with Orders Nos. 19514 and 19515.

6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with ano uniform price and that this Commission, unless it fixes a uniform price for the field is permitting discrimination in price which adversely affects many [fol. 245] producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relations to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses to one of Oklahoma's most valuable resources.

7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

8. That this application should be denied in the interest of preventing: (a)—economic waste of a great natural resource to wit: natural gas, (b)—actual physical waste of natural gas in the Hugoton Field, (c)—loss to the producers and royalty owners in said field, (d)—loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Okla- [fol. 246] homa in the form of lessening royalties accruing

to the School Land Commission, (e)—the inequitable taking of natural gas from the common source of supply owned by all; (f)—discrimination as to prices paid throughout the field, which discrimination adversely affects many royalty owners and producers, (g)—the inefficient and wasteful utilization of natural gas.

9. That this application should be denied.

ORDER

It is therefore ordered by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbers 19514 and 19595 heretofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

Done and performed this the 4th day of February, 1947.

Corporation Commission of Oklahoma, Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, —— —— Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

EXHIBIT "16"

Page 1 of 4
PM-013

Panoma Corporation
Cost of Service
Gathering & Treating
Year 1951

1	Direct Plant Expense	1950	$ 220767.95
2	Production & Gathering Exp, 80% of	1950	728387
3	Selling Expense	1950	210635
4	General & Administrative Expense 85% of	1950	755418
5	Blending Stocks & Additives	1950	15242 78
6	Processing Fee	1950	413501
7	Taxes other than Income Taxes	1950	272697
8	Discounts Allowed	1950	25531 3
9	Depreciation Accrual (Page 4)	1951	24002383
10	Return 11% on Net Invested Capital at end of	1950	49560098
11	Income Tax, 1/2 of Return equals 1/3 (Return plus Tax)		23780049
12	Total Cost of Service		$ 1342836.78
13	Delivery 1950 Mcf at 14.65		33541148
14	Per Mcf of delivery		$ .04153
15	Wellhead Price Fixed by Order of O.C.C.		.07000
16	Required Realization on Sales		.11153

Panoma Corporation

Est. of Investment for Earnings Analysis

2
6-U-51

		1950	1949	1948
1	Extraction Plant, end of year	$3108 672.97	$3087 441.58	$2998 116.01
2	Lease Lines " " "	406 766.03	1274 051.76	385 397.46
3	Gathering System " " "	857 340.91	Inc. Above	743 719.65
4				
5	Sub total	4572 679.91	4361 493.34	4017 137.12
6	Other Property Allocated, end of year			
7	Office Furniture & Equip't	54090.51	24 289.82	13417.11
8	Trucks	47743.22	45 559.32	5117.61
9	Camp Equipment	2250.04	Inc. Above	1908.34
10	Air Craft	1012232	1026024	859.04
11	Machine Tools	603.71	026.22	35.74
12	" Belts	1012232	10122.32	1012.24
13	Shielding Units	230 018.38	229 853.57	2248 716.00
14	100% of above	359 945.50	325 111.49	313 650.17
15	80% of above	287 956.40	260 089.19	250 920.14
16	Less plus less 15% Deduct amount	4660 636.31	4621 582.47	4268 031.11
17	Working Capital (1)	119 896.63		
18	Gross Invested Capital end of year	4780 532.94		
19	Estimated Reserve Requirement	456 887.64		
20	Net Invested Cap. 10/, end of year	$4323 645.30		

Note (1) See page 3. Value of manufactured products on hand is not included.

Kansas Corporation
Est of Working Capital

3
4-4-51

	Working Capital			
1	80% of Production Gathering Expense	1950	$ 91104.86	$ 72883.89
2	Direct Plant Expense			220767.95
3	Selling Expense			21063.57
4	General and Admin Expense	1950	88880.21	
5	85% above			75548.18
6	Blending Stocks & Additives			15242.78
7	Processing fee			4135.01
8				409641.38
9	1/8 Line 8			51205.17
10	Materials & Supplies *			68691.46
12	Total Working Capital			$ 119896.63

* Blending Stock 18691.46
Materials and Supplies 76504.38
Total
Est. for Lease and Plant 50000.00
Total $ 68691.46

Panama Corporation

Est of Depreciation Reserve Accrual and Reserve Requirement

4-4-51

4

				1950	1949	1948
1	Extraction Plant less Sewer Systems; Syst			4572679.91	4361449.35	4017127.32
2	Accrual 5% rate *			2186339	2180746	2008563.9
3						
4	Other Property allocated					
5	Office Furn Eqpt	@	7.5%	4056.75		
6	Motor Trucks		25%	119580		
7	Power Eqpt		20%	45001		
8	Air Eqpt		25%	85356		
9	Machine Tools		10%	56037		
10	" Beds		3%	30367		
11	Derricking Units		3%	6900.40		
12		Av. 7428%		2673120	2411928	2329648
13		80% value		2138984	1931942	1863718
14						
15	Total Accrual for following year (8 years)			24003383	23739408	21949356
16						
17	Reserve Requirement, end of year					
18				21949356	21949356	0
19					23739408	
20		Total		4.6887.64	21949356	- 0.

* Based upon accruing 75% of property in 15 years.

[fols. 251-252] Chairman's Certificate to foregoing transcript omitted in printing.

[fol. 253] [File endorsement omitted.]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

Natural Gas Pipe Line Company of America, Plaintiff in Error,

vs.

Panoma Corporation and The Corporation Commission of the State of Oklahoma, Defendants in Error.

OPINION—September 15, 1953

Syllabus

1. The grant of power to the Corporation Commission under 52 O.S. 1941, § 239 to regulate the taking of natural gas from a common source of supply "so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom", by necessary implication includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes, and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

2. The provisions of 52 O.S. 1941, § 233, give the Corporation Commision authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

3. When the Corporation Commission by valid order fixes the minimum wellhead price which must be paid for natural gas taken from a designated gas field or gas pool, that order supersedes any existing contract by which a purchaser is taking natural gas from such

gas field or gas pool at a lesser price; and from and after the effective date of such order such purchaser owes a legal duty to pay for all gas taken, as much as the minimum price fixed by such order.

4. When, upon proper hearing, the Corporation Commission finds that a natural gas purchaser is taking natural gas from the producer at less than the minimum wellhead price fixed by valid order of the Corporation Commission, then the Commission may order that such purchaser pay at least as much as the fixed minimum price for all gas thereafter taken, with provision that if such purchaser fails to so pay for such gas that such purchaser must cease taking gas from such gas field; and this rule applies even in case the gas purchaser is taking gas under an existing written contract executed prior [fol. 254] to the Commission's price fixing order, which contract fixed the purchase price at less than the minimum fixed by the order.

5. When upon proper hearing the Corporation Commission finds that a purchaser of natural gas from a gas field or gas pool covered by price fixing order has taken gas therefrom and paid therefor a price or sum less than the legal minimum price, then the Corporation Commission may ascertain the amount of gas so taken at such lesser price and may ascertain the balance necessary for such purchaser to pay as a "back pay" sum to bring such purchaser into full compliance with the price fixing order by paying for all such gas a sum and price equal to the minimum price established by the price fixing order.

6. When the Corporation Commission has properly determined the amount of a "back pay" sum legally due to be paid by a natural gas purchaser, to constitute compliance with a valid order fixing a minimum price, the Corporation Commission may direct that such sum paid, with provision that if such payment is not made the said purchaser shall cease to take gas from such gas field or gas reservoir, and such an order does not constitute the rendering of a money judgment beyond jurisdiction.

7. Orders of the State Corporation Commission in administering and enforcing compliance with a valid order fixing minimum wellhead price of natural gas produced in a certain field in Oklahoma, did not constitute an undue interference with Interstate Commerce and such orders are not violative of the Commerce Clause of the Federal Constitution though such natural gas after production and compression and further processing is to go into purchaser's pipeline system for transportation to other states for final sale to consumers.

8. Record examined, and held, that the findings of the Corporation Commission that the purchaser here involved was a purchaser of natural gas from the named gas pool or gas reservoir, and that such purchaser had taken and was taking gas from such reservoir at less than the minimum purchase price theretofore fixed by valid order, are all sustained by the evidence and by the stipulation of the parties.

Application to the Corporation Commission by Panoma in connection with taking of natural gas from certain leases in Texas County, by Panoma, and sold to Natural. From the order made thereon Natural appeals.

Affirmed

[fol. 255] S. A. L. Morgan, D. H. Culton, Warren T. Spies, and Coleman Hayes, of Okla. City, Okla. For Plaintiff in Error.

Robinson, Shipp, Robertson & Barnes, Richardson, Shartel & Cochran, Blakely Murphy, all of Okla. City, Okla. For Defendant in Error Panoma Corporation.

Floyd Green, Ferrill Rogers, both of Oklahoma City, Okla. For Corporation Commission.

Welch, J.,

The Panoma Corporation owns extensive oil and gas leases in the Guymon-Hugoton gas field in Texas County, Oklahoma. Gas in large quantities is taken therefrom

daily pursuant to a contract between Panoma and The Natural Gas Pipeline Company of America.

This contract was made and this gas taking began before the State Corporation Commission by its orders Nos. 19514 and 19515 fixed the price at not less than 7¢ per thousand cubic feet at the wellhead for all natural gas taken from the producing structures or formations of said gas field.

Those orders were upheld by the Supreme Court of Oklahoma and by the Supreme Court of the United States in 1950. Cities Service Gas Company v. Peerless Oil & Gas Co. et al, 203 Okla. 35, 220 P. 2d 279. Cities Service Gas Company v. Peerless Oil & Gas Company, Corporation Commission of Oklahoma, et al, 340 U.S. 179, 95 L. Ed. 156. Thus, since the effective date of the aforesaid orders, January, 1947, no one could legally take natural gas from that field at a price less than 7¢ at the wellhead.

The authority of the State in the exercise of its police power to regulate the taking of natural gas is well settled. See Julian v. Capshaw, (1930) 145 Okla. 237, 292 P. 841; Wilcox Oil & Gas Co. v. State (1933) 162 Okla. 89, 19 P. 2d 347; Sterling Refining Co. v. Walker (1933) 165 Okla. 45, 25 P. 2d 312; Russell v. Walker (1932) 160 Okla. 145, 15 P. 2d 114; Patterson v. Stanolind Oil & Gas Co. (1938) 182 Okla. 155, 77 P. 2d 83; (appeal dismissed, 35 U.S. 376, 83 L. ed. 231); Croxton v. State (1939) 186 Okla. 249, 97 P. 2d 11; Denver Producing & Refining Co. v. State, (1947) 199 Okla. 171, 184 P. 2d 961; Quinton Relief Oil & Gas Co. v. Corp. Comm. of Oklahoma (1924) 101 Okla. 164, 224 P. 156, and Cities Service Gas Co. v. Peerless Oil & Gas Co. et al, (1950) 203 Okla. 35, 220 P. 2d 279.

The contracted price Natural was to pay Panoma for gas taken under the contract was less than 7¢, but the contract was definitely subject to any valid order of the Corporation Commission. The contract in Article Fourteenth provided that:

> [fol. 256] "This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during

> the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation."

See, also, the following language of this court in State v. Waterfield, 167 Okla. 209, 214, 29 P. 2d 24, 29:

> "Thus it may be seen that changes in the obligations of contracts may be made when made as a proper exercise of the police power, not because constitutions may be suspended by police power, but because the right to legislate in the exercise of that power is a part of the existing law of the state at the time of the execution of the contract, and as such enters into the terms and provisions of the contract in the same manner that statutes prescribing procedure become a part of the contract.
>
> "It may be said that all property rights including contracts are subject to the proper exercise of the police power, and in that respect it is often said that individual rights to property being subject to the exercise of this power are qualified as distinguished from absolute."

See, also, Home Building & Loan Ass'n. v. Blaisdell, (1933) 290 U.S. 398, 78 L. ed. 413, 54 S. Ct. 231.

So in 1951, after the aforesaid Price Order of Commission had been fully sustained, Panoma, after demand, made this application to Commission to require Natural to comply with said order to pay a wellhead price of 7¢ for gas taken and to be taken by Natural from Panoma's leases in said field in Texas County.

Natural responded, in substance, that by reason of the terms of the contract Commission's price order was not applicable to the gas taken by Natural; and that if proper analysis be made there was no violation of the price order in the taking of gas from this field by Panoma and Natural because such taking under the contract resulted in

an aggregate or gross return to Panoma equal to [fol. 257] a wellhead price of 7¢ or more.

Upon trial Commission made its findings and entered its order. Commission found, among other things, 1, that since the effective date of the price order January 1, 1947, no one could legally take gas from this field at a price less than 7¢ per thousand cubic feet; 2, that the uncertainty as to the finality of that order, created by the appeal therefrom to the Supreme Court of Oklahoma, and the Supreme Court of the United States, justified Panoma in delivering gas from these leases to Natural without regard to said price order, or at less than the minimum price under the contract until said order was finally affirmed; 3, that nevertheless the taking of gas from the structure and formation in these leases at a price less than 7¢ at the wellhead was illegal; 4, that Natural should pay to Panoma the difference between the lesser amount actually paid for gas taken before June 1st, 1951, and the sum or price due at 7¢ for each thousand cubic feet; 5, that the actual amount of gas so taken from the leases was stipulated and was determined in accordance with such stipulation; 6, that therefore Natural should in twenty days pay the sum due Panoma; 7, that strict enforcement of the price order was necessary for the prevention of waste; 8, that the contract between Panoma and Natural could not impair or defeat the effect of the order; 9, that the acceptance of the contract contention would cause and invite discrimination and general breakdown of the regulation preventing waste, etc.

Commission ordered in effect that Natural should pay for all gas received on and after January 1, 1951, at the sum and rate of 7¢ per thousand cubic feet at the wellhead. Commission further ordered that Natural should pay to Panoma a "back-pay" sum sufficient to equal 7¢ per thousand cubic feet for all gas taken by Natural prior to January 1, 1951, at a lesser price.

Commission further ordered that if Natural should fail after 20 days to pay such "back-pay" sum to Panoma, or should fail to pay as much as 7¢ wellhead price for gas taken after January 1st, 1951, that Panoma should cease any delivery of gas to Natural.

On this appeal Natural contends as upon its response

below, with the further contention that Commission's "back-pay" order has the effect of a money judgment which Commission was not authorized to enter.

Natural's contention that Commission's price order was not applicable to the gas taken by Natural was based on Natural's construction of the contract to be a purchase of only [fol. 258] a part of the natural gas taken from Panoma's leases. Since Commission did not agree with that construction we must refer to some of the details of the contract, but we deem it not necessary to quote all of the contract of many pages.

As items of background the contract shows that Natural owns an extensive pipeline system by which it transports gas from Texas and Oklahoma to consumers in the Chicago metropolitan area and elsewhere; that with contemplated expansions the system will require on maximum days up to three hundred forty (340,000,000) million cubic feet of gas per day; that Natural desires to purchase from seller (Panoma) as a part of its system needs, a daily average of seventy-six (76,000,000) million feet of gas; that seller owned gas rights in more than seventy-eight thousand (78,000) acres of land in the Guymon-Hugoton field, described by legal description of each tract of land in the contract, and that seller desires (quoted from contract) "to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells * * * and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract."

We should here observe that the rough gas as it comes from the well is not suited to transportation in Natural's pipeline, and that the gas must go through a refining or cleaning or improving process before Natural can transport it and sell it to its ultimate consumers. It is essential that such processing be done before the gas is finally taken into Natural's pipeline. That item was considered in the contract and the plan was set out in substance as follows: Seller should deliver the gas direct from the wells to Natural's initial or primary pipe. Natural would then pass it into its

own compressor station on or near the seller's premises where Natural would compress the gas, thence it would in turn pass the gas to a processing plant to be constructed and operated by seller.

Panoma was definitely obligated to construct said plant at a cost of several million dollars, and to efficiently operate it and to process the gas through such plant so as to deliver the gas back to Natural into its pipeline system in a carefully specified condition. When the gas was thus returned to Natural it was to be metered and that measurement was the basis of payment by Natural to Panoma, with provision that title passed to Natural at that point. There was provision in detail as to the operation of this processing plant by Panoma, and in case of failure of Panoma to properly and [fol. 259] efficiently operate the plant, Natural had the right to take over such plant and add any needed equipment and operate the plant for seller, all at seller's expense, plus 10% supervising charge, and keep custody and operation of the plant until sellers could give satisfactory assurance as to future operation by sellers.

In processing the gas from Natural's compression station or plant through seller's processing plant the seller was to remove certain detailed constituents of the rough gas including water and a sufficient portion of the hydrocarbons so as to produce a certain specified condition in the gas and so as to prevent the formation of hydrates and/or the condensation of hydrocarbons in Natural's pipeline system. But seller was prohibited from removing hydro-carbons to the extent of reducing the heating value of the gas below a fixed figure.

All constituents so removed from the rough gas which had any value was to be kept by sellers as their own property, or for sale by them for their own account.

The contract provided that it was contemplated by the parties that all of the gas underlying seller's reserves of 78,000 acres would be required to fulfill this sale contract, and that all such gas was reserved for deliveries under this contract, and that all of the entire gas reserve was dedicated to the purpose of this sale contract, and none of such gas under the entire area should be sold to any other person. To this last provision there were minor exceptions including

or preserving the rights of landowner—lessors to have gas for domestic usage, and the right of sellers to use gas required for operation of the leaseholds, but we regard those items as being immaterial here.

Natural places great emphasis on part of these contract provisions and argues that in fact it did not purchase from Panoma all of the gas produced from the wells and first delivered to Natural to enter its compressor. Natural contends that since Panoma thereafter extracted part of the constituents of the rough gas that Natural bought only a part or portion of the whole gas, and much emphasis is placed on the provision that it is only the gas in its final purified form which was metered and title passed to Natural which Natural bought, and in that manner took from the gas wells. Natural contends, and the proof shows, that Panoma marketed certain of the extracted constituents from the gas and that Panoma received substantial sums therefor. In final analysis it is the contention of Natural that the sum it paid to Panoma for the gas taken into its pipeline plus the gross amount received by Panoma for the sale of extracted ingredients amounted to as much or more than 7¢ for each cubic feet of natural gas taken from the wells, and that therefore the taking from the gas reservoir was not in violation of Commission's price order.

[fol. 260] This calculation by Natural would add the gross sum received by Panoma for all sales of extracted ingredients as if the gross sum amounted to a payment to Panoma on or for the wellhead gas. That calculation, however, overlooks these facts: (1) that such payments to Panoma are more in the nature of payments for manufactured commodities than payments for natural gas, (2) that no account is taken of the great cost of building, maintaining and operating the expensive plant required in the process and required by the contract; (3) that, as between Panoma and Natural, Panoma has earned the value of these extracted ingredients by treating or processing Natural's gas to bring it to the precise condition required by Natural in its business, and specifically required by the contract, (4), the well known fluctuation in market price of such commodities which would result in Panoma operating its plant at different times at more or less profit, or more or less loss.

This contention by Natural does not take into consideration any part of the cost of the processing operation. In order to determine whether the value of the extracted ingredients exceeded the processing expense, or whether Panoma made a profit on the processing operation, the calculation must necessarily include the cost of operating its processing plant plus some contribution to the cost of construction of the plant, or to depreciation, which is not included in Natural's calculation and argument.

Furthermore, this contention by Natural does not give sufficient emphasis to the contract provision that Panoma must construct and operate the plant, whether profit or less is realized from the sale of the extracted constituents of the rough gas.

Panoma contends, and there is evidence to support it, that proper calculation of the operating cost of processing the gas, with proper charge for depreciation of the plant, or proper cost amortization, with maintenance and replacement costs, would result in showing a loss, or little if any profit at all, and might very well at different periods show an actual loss; that in any event the amount of profit or loss would fluctuate over varying periods, and could not enter into such a calculation as that proposed by Natural, because it would result in different calculations over varying periods, and would result in Natural's paying one price in one period to bring the aggregate up to 7¢ and a different price over a different period to bring such aggregate up to 7¢. Thus Panoma points out that Natural would be operating upon a different pay basis for each month, or for each quarter or for each semi-annual or annual period. And Panoma takes the view that Natural in effect and in fact is the purchaser of natural gas from the gas wells and not merely a purchaser of part only of the gas produced. [fol. 261] We think a consideration of all of the provisions of the sale contract is necessary to decide this controlling question. We think the narrow view of Natural was properly denied by Commission. It seems well demonstrated by the overall plan that Natural, if not in fact purchasing all of the gas located in Panoma's gas reserve, was at least purchasing all of the gas actually produced and run into the primary line of Natural and thence to its compressor

station. The temporary return of the gas to Panoma after Natural had compressed it was a custody or possession for a particular purpose, that is, to clean up or purify or process the rough gas for one purpose only, and that was to redeliver the gas in a stipulated condition to Natural. This processing may or may not have resulted in a profit to Panoma in the future. Nevertheless, that processing must be performed by Panoma. It is essential to Natural that it be done. The contract so provides, and in addition thereto the contract authorized Natural, in the event of unsatisfactory operation by Panoma, to take over the plant and operate it at the cost of Panoma plus 10% management expense.

Panoma produced the rough gas and delivered it to Natural. Thereafter when Panoma received back the gas and processed it and redelivered it to Natural, we regard that as merely a detail of the overall plan of processing the gas in selling and delivering it to Natural. We notice the fact that it was metered on this second delivery and that the expression was used that title passed at that point, but we do not consider that in any sense controlling, if it is even material in deciding the controlling question.

We deem it fair to assume, as apparently Commission assumed, that as between the contracting parties the recovery by Panoma of any salable products was to balance or offset the overall cost to Panoma of carrying out its obligation to Natural to place Natural's gas in proper condition to enter Natural's pipeline system and proceed to the burner tips of Natural's customers, with any loss in the processing to be suffered by Panoma, and any profit therein to offset the hazard of a loss, or the profit or chance of profit over one period to offset the loss or chance of loss during another period. Thus a similar situation would be created as if Natural, after first receiving the gas and compressing it, had employed or contracted with some other person to process its gas in exchange for the value of the extracted ingredients necessary to put the gas in the required condition for ultimate use by Natural.

The contract provides that Panoma desires to sell Natural all the gas underlying its entire gas reserves; and that Panoma has completed a number of gas wells and will drill

additional wells and install gathering lines, etc., and operate the entire production, all for the purpose of delivering gas to Natural; and that it is contemplated by both parties that all the gas underlying Panoma's acreage will be necessary to cover Natural's requirements and to fulfill the sale contract; and that all of the entire gas production of Panoma is [fol. 262] reserved for deliveries under the contract; and that all of Panoma's gas reserve is dedicated to the purpose of this sale contract; and that none of such gas shall be marketed to any other person; and reference is made to Natural's lien of dedication on Panoma's leaseholds themselves.

These contract provisions tend strongly to support Commission's findings, and to indicate that in truth and in fact Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced from under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought.

We therefore agree with the conclusion of Commission that Natural purchased and took natural gas from this reservoir at less than 7¢ per thousand cubic feet wellhead price. The extent thereof was in the amount stipulated and therefore found by Commission.

There was some contention on the part of Natural that it did not take "natural gas" from the structures and formations of the Guymon-Hugoton field because the gas it finally took and paid for was not in fact "natural gas". This contention was based on the facts above set out. No authority is cited to sustain the conclusion that natural gas produced from the earth and transported to consumers who use and burn it as such, is changed into something different because of the fact that after it is taken from the well it is cleaned up and processed before final delivery to the ultimate consumer. Furthermore, the contract specifically provides that "the term 'gas' wherever used herein, shall mean natural gas;" with further statement which makes the word "herein" refer to all provisions of the comprehensive contract.

On this overall contention Natural cites Phillips Pe-

troleum Co. v. State, included by consolidation with Cities Service Gas Co. v. Peerless Oil & Gas Co. 203 Okla. 35, 220 P. 2d 279; We have considered that cited authority, but do not find anything therein which might in any manner support the position and contention of Natural in this case. We deem it not necessary to further discuss the Phillips case.

In this case Natural was not a producer of natural gas, but it was a purchaser of natural gas produced by Panoma. The question here is whether Natural paid the necessary 7¢ per thousand cubic feet wellhead price. If Natural paid Panoma less than the proper 7¢ wellhead price, then there [fol. 263] was a violation of the price order which was made and became effective after the contract was made, and the price order would govern and control over the contract price of less than 7¢. Upon that point, as above stated, we have approved the conclusion of the Commission.

Natural next contends that the order of Commission requiring Natural to pay to Panoma the "back pay" sum on all gas taken before January 1, 1951, amounted to a judgment for that sum of money in favor of Natural and against Panoma, and that the Corporation Commission was not authorized to enter any such money judgment.

We do not agree that the order of Commission was in any sense the rendition of a money judgment against Natural. It was merely a calculation and statement of the amount Natural should have paid for the gas taken before January 1, 1951, to comply with the price fixing order. There was no controversy as to the contract between the parties, nor as to the amount of gas Natural had received from the wells of Panoma, nor as to the amount Natural had paid on the purchase price thereof. By express provision of the contract, as well as by law, the contract was modified by the price order and the minimum wellhead price of 7¢ became a part thereof and Natural was obligated by law to pay that price of 7¢. The calculation and statement of this "back pay" sum by Commission was merely a statement of the further sum Natural should pay to bring itself in full compliance with the minimum price requirement. Commission could not enforce it as a money judgment, however, this does not

mean that Commission is without any power to enforce compliance with its valid price fixing order. As in case of any other valid order, Commission may require compliance therewith by any other order within its authority, so in this case, while Commission could not require Natural to pay this sum, it could prohibit Natural from taking further gas until it brought itself into compliance with the effective price order by making the payment. If it were otherwise Commission would be powerless to take any steps to require compliance with its valid orders in the highly important program of conservation, and might as well not make them.

We hold that the order as to this "back pay" sum was within the authority of Commission. This conclusion finds support in our statements in Cities Service, supra.

Natural further contends that the orders here involved constitute an undue interference with Interstate Commerce, and that such orders are violative of the Commerce Clause of the Federal Constitution.

[fol. 264] We deny that contention on the authority of Cities Service case, supra. In that case it was contended that the action of the Corporation Commission in making and enforcing the specific wellhead price orders now involved in this case would so violate the Federal Constitution.

Speaking on that point the Supreme Court of the United States said: (95 L. ed. 161-162)

> "The Commerce Clause gives to Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. (Citing authorities.) It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. (Citing authorities.) The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might

be in the prevention of state restrictions. Nor should we lightly translate the quiesence of federal power into an affirmation that the national interest lies in complete freedom from regulation. (Citing authorities.)

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation. (Citing authorities.)

"We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic con- [fol. 265] sumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. Some industrial consumers, who get bargain rates on gas for 'inferior' uses, may suffer. But strong arguments have been made that the national interest lies in preserving this limited resource for domestic and industrial uses for which natural gas has no completely satisfactory substitute. (Citing authorities.) Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause. (Citing authorities.)"

Since the Corporation Commission had authority to make price fixing orders without violating the federal constitution, then further orders within its authority designed to enforce compliance with such orders would likewise involve no violation of the federal constitution. To hold otherwise would bring about the result that the Corporation could and did make this specific price fixing order as applied to the Guymon-Hugoton field and the making of the order was not in violation of the Federal Constitution, but that subsequent valid orders directing compliance with the price fixing order would so violate the Federal Constitution. Such a conclusion, to say the least of it, would be most peculiar and quite illogical. Therefore, and upon the foregoing authorities we find no merit in this contention.

The orders appealed from are affirmed.

Johnson, V. C., J. and Corn, Davidson and Arnold, JJ. Concur; Halley, C. J. and O'Neal, Williams and Blackbird JJ. Dissent.

[fol. 266] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

NATURAL GAS PIPE LINE COMPANY OF AMERICA, Plaintiff in Error

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Defendants in Error

DISSENTING OPINION—September 15, 1953

Halley, C. J. (dissenting).

The majority opinion is affirming the Corporation Commission in this case is wrong. I am compelled to express a dissent.

On December 1, 1946, Natural Gas Pipe Line Company of America entered into a contract with D. D. Harrington and others who comprised a partnership doing business

under the firm name of Harrington and Marsh. Panoma Corporation acquired all the interest of the partnership in the contract.

Under the contract Natural was to purchase gas from the partnership and pay for it until the first day of July, 1951 at six cents (6¢) per thousand cubic feet. The unit volume for the measurement of gas delivered under the contract was one cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60°F) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch.

[fol. 267] Panoma began the delivery of gas to Natural in August, 1948. This gas was paid for at a price basis of 5.12 cents per thousand cubic feet in accordance with the base provided by the Corporation Commission. From August 1948 to the end of 1950 Panoma received from Natural $3,634,523.74.

On December 9, 1946, the Corporation Commission issued an order which is as follows:

> "1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.
>
> 2. This order shall be effective as of January 1, 1947."

Not until January 30, 1951, did Panoma take any action in regard to this matter when it filed an application with the Corporation Commission for a hearing. As a result the hearings had on this application the Corporation Commission made an order that Natural pay Panoma the difference between the amount it had heretofore paid for such gas delivered to it by Panoma and the amount which the Commission said it should have paid for the gas herein determined, computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute and if Natural did not pay it Panoma

should stop delivering gas to Natural. From this order Natural properly appealed.

The evidence taken at the hearing showed that Panoma had received from the sale of extracted liquids the sum of $2,968,405.33 in the period August 1948 to December 31, 1951. With the $3,634,523.74 received over the same period [fol. 268] from Natural and the amount received from sale of liquids Panoma was paid a total of $6,602,929.07 or $.09301 per thousand cubic feet on 14.65 pressure base for all the gas disposed of.

The order of December 9, 1946 fixing the price that should be paid at the wellhead was made as if the producer of the gas was selling at the wellhead. In the instant case the producer, Panoma, was not selling at the wellhead.

At no time did Natural buy the raw gas (spoken of in the majority opinion as rough gas at the wellhead). The contract stated that title to the gas passed to Natural at the meter station and at this point the hydrocarbons had been extracted.

The contract in Section One, Article V, specifically provided that Panoma reserved the right to extract from the gas nitrogen, helium, natural gasoline, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents.

The Corporation Commission only has the right to fix the price of gas as a conservation measure under the theory that if no price is fixed that the gas might be consumed in producing cheaper products and full benefit would not be received from the gas. We held that this right was given by implication in the 1915 Conservation Act, Cities Service Gas Company v. Peerless Oil and Gas Company, et al, 203 Okla. 35, 220 P. 2d 279. The order did not attempt to guarantee the producer a profit of 7¢ a thousand and it had no right to attempt to do so. It only said it should not be sold for less than 7¢ per thousand at the wellhead. In my [fol. 269] opinion under the evidence and the order of the Commission, Panoma received more than the 7¢ required and for that reason Natural owes Panoma nothing. There was no evidence that there was any waste in the use to which this gas was put.

If Natural is to be charged with the payment of 7¢ per thousand for gas at the wellhead then it should be credited with everything that was taken out of the gas as if it was done before it reached the wellhead since Natural only received dehydrated gas. It is no concern of the Corporation Commission as to what price is paid the producter. Their concern is with conservation and to see that the gas is not used in a manner whereby a natural resource would be dissipated without the State receiving the proper benefit.

This Court should not say that a purchaser of dehydrated gas which has constituents extracted to the extent of 45% of the value of the whole should be burdened with paying a fixed wellhead price without receiving any credit for the by-products. The order of the Corporation Commission of December 9, 1946 was not made with the contract in this case in mind. Neither was the contract written with such an order in mind. The order and contract must be considered with the point in mind that the Commission was not guaranteeing a profit to the producer but was endeavoring so as to conserve the gas in this State in this particular area.

I am also of the opinion that the Corporation Commission had no authority to tell Panoma that it must not furnish Natural any more gas unless Natural paid them this $1,300,000. This was a matter for the courts. [fol. 270] Our Constitution and Statutes at no place provide for the Corporation Commission taking the action it has in this case by saying to a purchaser of the gas you pay the producer $1,334,960.50 or else the source of supply of gas for many of your customers will be chopped off. The Natural had a binding contract with Panoma through its predecessors and that contract should be interpreted by the courts and not by a regulatory body. In Southwestern Light and Power Company v. Elk City, 188 Okla. 450, 111 P.2d 820, we said that the Corporation Commission is without jurisdiction or power to enter or enforce a judgment or order adjudicating the claimed contracted rights of a consumer of electric current under a written contract with a utility to receive a stated reduction of rate and refund of money for electric current. The case at bar presents just as much the construction of contractural rights as in that

case. I think that in this case as there the rights of the parties should be determined in courts of general jurisdiction. It is not a job for laymen.

The Corporation Commission has no right to tell the producer he could not sell constituents of raw gas separately. Strictly speacking all the order did was to say that when gas is sold at the wellhead it must bring not less than 7¢ per thousand cubic feet. If the producer desired to retain for his use and profit certain constituents he had a perfect right to do so and as long as there was a substantial compliance with the Commission order it should be sufficient to satisfy the Commission. This was its conclusion [fol. 271] as to the right of the Phillips Petroleum Company when it disposed of certain elements of gas separately. In that instance Phillips received 6.9855 cents per thousand cubic feet from all the constituents of the gas.

This Court is given the authority by Section 20, Article IX of our Constitution to exercise its own independent judgment as to both the law and the facts of an appeal involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of this State. Such assertion is made in this case. I reiterate that when it appears from the testimony what the producer has received over nine cents for his gas when he had only to receive seven and when under the plain terms of the contract the producer has retained for his own use and benefit certain elements of the gas from which he gets 45% of the total value of all the gas after it has been through the dehydration plant it is contrary to fundamental conceptions of justice to say that the buyer of the dehydrated gas shall pay 7¢ for the raw gas and not receive credit for the profit received from the other constituents of the gas. He did not intend to buy them. The producer did not intend to sell the hydrocarbons. The Corporation Commission was without authority to make a new contract for the parties.

In this case Natural complied with its part of the contract. It did not know what Panoma was receiving for the hydrocarbons that it retained. It had the right to rely on Panoma to comply with the Commission's rules as its contract with Panoma had been in existence four years

[fol. 272] and two months when Panoma's application was filed with the Commission. Furthermore it had been two years and a half before any action was taken by Panoma to question the position of Natural.

Neither the Constitution, Acts of our Legislature or any decision of this Court provide a penalty for purchasing residue or dehydrated gas at any price. Since the Commission has not provided for this situation by its orders, it cannot assess such a penalty after the taking. Such action on its part is clearly a violation of the due process clause of both the Federal and State Constitutions.

The producer cannot "have his cake and eat it too." If he is to sell his gas to the Pipe Line Company at seven cents then he must of necessity account to the buyer for all the by-products or hydrocarbons. Under no interpretation of the contract can Panoma be the employee of Natural. In no way that you can analyze this case can the order of the Corporation Commission be sustained.

I respectfully dissent.

[fol. 273] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING AND SUPPORTING BRIEF—Filed October 30, 1953

Comes now Natural Gas Pipeline Company of America, plaintiff in error, hereinafter called Natural, and shows to the Court that on the 15th day of September, 1953, an opinion was filed in this cause affirming an order of the Corporation Commission of the State of Oklahoma, hereinafter called Commission, which required Natural to pay to Panoma Corporation, hereinafter called Panoma, more than [fol. 274] $1,300,000.00 for past deliveries of residue gas[1]

[1] By residue gas as used herein is meant the constituent of the natural gas produced from the wells (referred to in the Court's opinion as "rough" gas) which remains after the rough gas has been processed in a gasoline plant and valuable constituents removed in liquid form.

as a condition for the further delivery of such gas under a contract between Panoma and Natural. The Commission further ordered Natural to pay to Panoma for residue gas the same price which the Commission fixed for natural gas (with all constituents present) at the wellhead in the Guymon-Hugoton Field. The opinion reflects a grave misunderstanding of the undisputed facts involved. As a result of such misunderstanding of the undisputed facts, the Court has misinterpreted the contract, as a matter of law. A rehearing should be granted for the following reasons:

I

The Court's Opinion is based upon the erroneous belief that natural gas (rough gas) was delivered by Panoma to Natural at the wells

Neither Panoma nor the Commission has ever contended that there was a delivery of gas in any form to Natural until it had first been (1) produced by Panoma (117 wells had been drilled by Panoma on the dedicated acreage at the time of the hearing (R. 40). Some of those wells were as much as 15 or 20 miles from the compressor station (R. 210)), (2) gathered by Panoma through its own gathering lines, and (3) transported by Panoma from its wells to Natural's compressor station. Natural had no "initial [fol. 275] or primary pipe" between the wells and its compressor station into which "rough gas" could have been delivered. All lines from the wells to the compressor station were owned by Panoma and its president so testified (R. 52). The Commission found that the gas "was delivered, but not metered or measured at a compressor station owned and operated by Natural Gas Pipeline Company of America." Panoma's counsel stated before the Commission, "It's our position that the gas is delivered to them at the compressor station * * *" (R. 52). The testimony of Panoma's president clearly shows that Natural's compressor station was the point of first delivery to Natural of gas and that this delivery was of temporary custody only and for a special purpose (R. 47). There was, therefore, no delivery, as the opinion recites, of "gas direct from the wells to Natural's initial or primary pipe."

II

The Opinion overlooks positive and undisputed proof that Panoma, from the utilization and sale of its natural gas, realizes 7.04 cents per m.c.f. after allowance is made for all direct costs and plant depreciation aggregating $1,602,280.04. Of this amount $622,366.97 represents depreciation

The opinion clearly reflects a mistaken belief that Natural, in its argument respecting Panoma's realization from the sale of the constituents of the "rough gas", has not taken into account plant costs or depreciation. It is stated in the opinion that:

> [fol. 276] "The calculation must necessarily include the cost of operating its processing plant plus some contribution to the cost of construction of the plant or to depreciation, which is not included in Natural's calculation and argument."

Exhibit 14 (R. 234) prepared by Panoma's accountants shows Panoma's receipts from "total residue and products" after deducting "total cost", including depreciation, to be 7.04¢ per m.c.f. Natural, in its reply to the "Printed Argument" of Panoma and the Commission, discussed the exhibit at length (Natural's Reply to Printed Argument, pages 14-17).

III

The Commission in promulgating the Order—called by the Court a "back pay" order—arrogated unto itself (and this Court has approved such arrogation), judicial power nowhere conferred upon it by the Constitution or Statutes of the State of Oklahoma.

The Commission, as the Court points out:

> "Ordered in effect that Natural should pay for all gas received on and after January 1, 1951, at the sum and rate of seven cents per thousand cubic feet at the wellhead."

Furthermore, the order contained provisions clearly designed to bring about its enforcement as to past transac-

tions. Not only did it direct Natural to pay the sum of more than $1,300,000.00 within 20 days, but provided that upon Natural's failure so to do Panoma should cease deliveries of gas to it. Such an order, adjudging as it does that one party to a contract is indebted to another, directing the payment of the amount so determined and contain-
[fol. 277] ing coercive provisions for enforcement, is in truth and in fact a money judgment, for the rendition of which the Commission has no constitutional or statutory power.

IV

The Commission's Order discriminates against Natural and is therefore violative of Article 2, Sections 2, 7 and 15, and Article 5, Section 59 of the Oklahoma Constitution and of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The order of the Commission and the opinion of this Court approving it clearly discriminate against Natural by refusing to apply to Natural the principles applied to Phillips in the Commission's Order No. 19702. Further discrimination results from the imposition upon Natural of the entire burden of the price-fixing order without imposing any upon those who purchase the extracted liquids.

V

The Order is violative of the Commerce Clause of the Constitution of the United States whether Natural purchases residue gas at the outlet of the gasoline plant or purchases "rough gas" at the well.

That Cities Service Gas Company v. Peerless Oil & Gas Co., 340 U.S. 179, (on the strength of which the Court brushes aside Natural's contention that the order violates the Interstate Commerce Clause) is applicable only in a narrow and restricted field has been stressed by the decisions of two United States Courts of Appeal rendered since
[fol. 278] the briefs were filed in this cause. State of Wisconsin v. Federal Power Commission (not yet reported); State Corporation Commission v. Federal Power Commission (not yet reported). Under these decisions the Cities

Service-Peerless case is here "irrelevant." Moreover, the facts as to interstate commerce are different here than those involved in the Cities Service case.

Wherefore, Natural prays that a rehearing be granted, that the opinion be withdrawn, that the order of the Commission be in all things reversed, and that judgment be rendered for Natural.

Respectfully submitted, S. A. L. Morgan, Warren T. Spies, D. H. Culton, Coleman Hayes, Attorneys for Plaintiff in Error.

[fol. 279] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—March 23, 1954

The clerk is hereby directed to enter the following orders:

35,203—Natural Gas Pipe Line Co. of America v. Panoma Corp. et al. Petition for rehearing and motion for oral argument denied.

Harry L. S. Halley, Chief Justice.

[fol. 280] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING LEAVE TO FILE SECOND REHEARING—May 25, 1954

The clerk is hereby directed to enter the following orders:

35,203—Natural Gas Pipeline Co. of America v. Panoma Corporation, et al. Application for leave to file Second Petition for Rehearing denied.

Harry L. S. Halley, Chief Justice.

[fol. 281] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted.]

PETITION FOR APPEAL—Filed June 15, 1954

Considering itself aggrieved by the final opinion and judgment of this Court entered September 15, 1953, following which this Court denied its Petition for Rehearing, Natural Gas Pipeline Company of America, Plaintiff in Error herein, does hereby pray that an appeal be allowed to the Supreme Court of the United States from said final opinion and judgment and from each and every part thereof; that said judgment be stayed pending final disposition of this appeal; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said Plaintiff in Error; and that the material parts of the record, proceedings and papers upon which said final opinion, judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, D. H. Colton, Coleman Hayes, Clarence H. Ross, Warren T. Spies, C. C. McDugald, S. A. L. Morgan, Counsel for Plaintiff in Error.

[fols. 282-349] [File endorsement omitted.]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted.]

ORDER ALLOWING APPEAL—June 15, 1954

Natural Gas Pipeline Company of America having filed its petition praying for an appeal to the Supreme Court of the United States from the final opinion, judgment and decree of this Court entered on September 15, 1953, and from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its

statement as to the juridiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $2500, with good and sufficient surety, and shall be conditioned as may be required by law, and that the judgment be suspended and stayed until the termination of this appeal; and that the Clerk of this Court is directed to prepare and forward to the Clerk of the Supreme Court of the United States a copy of such portions of the record as shall be designated by the parties.

It is further ordered that citation shall issue in accordance with law.

Harry L. S. Halley, Chief Justice.

Dated: June 15th, 1954.

[fol. 350] Statement Required by Paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States—Omitted in printing.

[fols. 351-352] Bond on Appeal for $2500.00 approved and filed June 15, 1954 omitted in printing.

[fol. 353] Citation in usual form omitted in printing.

[fol. 354] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted.]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 15, 1954

Natural Gas Pipeline Company of America, appellant in the above entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which it will rely in its prosecution of said appeal from the final judgment of the Supreme Court of Oklahoma entered on September 15, 1953.

1

The Supreme Court of Oklahoma erred in failing to hold that the commodity purchased by Natural from Panoma Corporation is residue gas, purchased at the outlet of a gasoline plant, after the natural gas of which the residue gas was originally a constituent has been produced, gathered, and processed through a gasoline plant; that the residue gas is purchased by Natural, expressly and exclusively, for immediate transportation to other states; and, therefore, that Order No. 19,514, as applied to Natural by Order No. 24,745, is violative of the Commerce Clause, Section 8, Article I, Constitution of the United States.

[fol. 355] 2

The Supreme Court of Oklahoma erred in failing to hold that basic order No. 19,514 of the Corporation Commission of Oklahoma, in its operation and effect as applied to Natural by Order No. 24,745, is violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, in this: Order No. 19,514 was so interpreted in the Commission's Order No. 19,702, as to permit the production of natural gas by Phillips Petroleum Company, when by the sale and utilization of the constituents of its gas it received a total of approximately only 7¢ per m.c.f., to-wit, 6.9855¢ per m.c.f., but in Order

No. 24,745, the Commission has interpreted Order No. 19,514 as prohibiting Panoma from producing its natural gas unless Panoma receives from the constitutents of its gas sold separately a total of 11.181¢ per m.c.f.

Such Order 19,514, together with the interpretative Orders 19,702 and 24,745—all considered together, operate to impose unequal burdens on purchasers from producers under similar circumstances to the detriment of Natural in that Panhandle Eastern Pipe Line Company may lawfully purchase residue gas from Phillips at 4.1716¢ when Phillips realizes from all the constituents of its raw gas the sum of 6.9855¢ per m.c.f. but Natural cannot purchase the same commodity, residue gas, from Panoma, at 5.359¢ per m.c.f. (the contract price) unless Panoma receives from all the constitutents of its raw gas the sum of 11.181¢ per m.c.f.

3

The Supreme Court of Oklahoma erred in failing to find that the Corporation Commisison of Oklahoma, having in Order 19,702 so applied Order No. 19,514 as to hold that Phillips in obtaining 6.9855¢ gross per m.c.f. for the constituents of its gas complies with Order No. 19,514, and [fol. 356] having in Order 24, 745 so applied Order No. 19,514 so as to hold that Panoma, though obtaining 9.301¢ gross and 7.04¢ net for the constitutents of its gas, violates Order No. 19,514, has made unjust and unreasonable distinctions between persons in similar circumstances, and in failing to hold that the Commission's such discriminatory enforcement of Order No. 19,514 constitutes a denial to appellant of equal justice within the prohibition of the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that Panhandle Eastern can continue under Order No. 19,514 as interpreted by Order No. 19,702 to purchase residue gas from Phillips under its contract at 4.1716¢ per m.c.f. but Natural cannot, under Order No. 19,514 as interpreted and applied by Order No. 24,745, purchase from Panoma under its contract residue gas at 5.359¢ per m.c.f.

4

The Supreme Court of Oklahoma erred in failing to hold: (1) that prior to the entry of Order No. 24,745 the Corporation Commission of Oklahoma had promulgated no order fixing the price of residue gas but had held in its interpretative Order 19,702 (issued in the same proceeding as that in which Order 19,514 was issued) that Phillips, selling its extracted liquids for 2.8138¢ and its residue for 4.1716¢,—a total of 6.9855¢ per m.c.f.—was complying with the requirements of Order No. 19,514; (2) that, since during the period through December 1950, Panoma had realized from the sale of its extracted liquids 4.181¢ and from the sale of residue gas 5.12¢—a total of 9.301¢ per m.c.f., Panoma was complying with Order No. 19,514 as interpreted and applied by Order No. 19,702; (3) that until the Commission should issue an order expressly fixing the price for residue gas, or otherwise interpret Order No. 19,514, Natural could lawfully continue to purchase residue gas from Panoma at the [fol. 357] contract price; and (4) therefore, that even if Order No. 24,745 were lawful as applied to future purchases of gas by Natural from Panoma, that order was violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States insofar as it was retrospective in nature, requiring Natural, as a condition to continued deliveries of gas under the contract, to pay Panoma an additional sum of more than $1,300,000 because of prior purchases.

5

The Supreme Court of Oklahoma erred in assuming, notwithstanding the clear and unambiguous provisions of the contract and the clear and undisputed evidence to the contrary, that Natural purchased from Panoma raw natural gas, either at the wellhead or in the producing formations (thereby avoiding a full discussion of the constitutional questions raised by Natural) since the evidence shows conclusively that Natural purchased only residue gas delivered at Natural's metering station, other than the insignificant quantities of raw gas purchased for fuel in Natural's compressor station.

6

The Supreme Court of Oklahoma erred in failing to hold that Natural incurred no liability to Panoma under Order No. 19,514 because of the receipt by Natural of the custody of Panoma's raw gas at Natural's compressor station since that order imposed no liability on those taking such custody; and in failing to hold that Order No. 24,745 was, therefore, violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, appellant Natural Gas Pipeline Company of America prays that the final judgment of the Supreme Court of Oklahoma affirming the order of the Oklahoma Corporation Commission be reversed, and for such other [fol. 358] relief as the Court may deem fit and proper.

Respectfully submitted, D. H. Culton, Coleman Hayes, Clarence H. Ross, Charles G. McDugald, Warren T. Spies, S. A. L. Morgan, Counsel for Appellant, Natural Gas Pipeline Company of America.

Filed June 15, 1954.

[fol. 359] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION FOR STAY OF ENFORCEMENT OF OPINION AND JUDGMENT—Filed June 15, 1954

Comes now Natural Gas Pipeline Company of America, plaintiff in error herein, and shows to the Court that on the 25th day of May, 1954, its application for leave to file second petition for rehearing in this cause was denied; that plaintiff in error intends to appeal to the Supreme Court of the United States from the opinion and judgment of this Court, and desires that the enforcement of the order of the Corporation Commission from which the appeal to this Court was taken and the enforcement of the opinion and

judgment affirming said order be stayed pending the taking of said appeal to the Supreme Court of the United States and disposition thereof by said Court.

Plaintiff in error further shows that there is on file in this Court as a part of the record in this cause a supersedeas bond with good and sufficient surety in the amount of $1,500,000.00; that said bond is adequate and sufficient to supersede and stay enforcement proceedings pending said appeal, and said bond is herewith tendered as a part of this application.

Wherefore, plaintiff in error prays that the enforcement of said order of the Corporation Commission and the opinion and judgment of this Court be stayed, suspended and [fol. 360] superseded pending said appeal to the Supreme Court of the United States and disposition thereof by such Court.

Dated this 15th day of June, 1954.

Natural Gas Pipeline Company of America, By Coleman Hayes, One of its Attorneys.

Filed June 15, 1954.

[fol. 361] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER STAYING ENFORCEMENT OF ORDER, OPINION AND JUDGMENT—June 15, 1954

On this 15th day of June, 1954, it appearing from the application of Natural Gas Pipeline Company of America, plaintiff in error, that said plaintiff in error intends to appeal from the opinion and judgment of this Court in this cause to the Supreme Court of the United States and that said plaintiff in error desires a stay of the enforcement of an order of the Corporation Commission from which the appeal to this Court was taken and the opinion and judgment of this Court affirming such order, and it appearing to the Court that there is on file as a part of the record in

this cause a supersedeas bond with good and sufficient surety in which the State of Oklahoma and/or Panoma Corporation, defendant in error, are obligees, in the amount of $1,500,000.00, and that said bond constitutes adequate and sufficient security and protection for said obligees and that no other or further supersedeas is necessary or required;

Now, therefore, it is ordered:

That enforcement of the order of the Corporation Commission from which the appeal to this Court was taken and [fols. 362-374] the enforcement of the opinion and judgment of this Court affirming said order be and the same are hereby stayed pending the appeal by plaintiff in error to the Supreme Court of the United States and the disposition of said appeal by that court.

Harry L. S. Halley, Chief Justice of the Supreme Court of Oklahoma.

[fol. 375] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 35,203

[Title omitted]

PRAECIPE—Filed June 25, 1954

To the Clerk of This Court:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

1. Record of Testimony and Proceedings before Oklahoma Corporation Commission.
2. Petition in Error.
3. Opinion of affirmance of the Supreme Court of Oklahoma, including dissenting opinion.
4. Petition for Rehearing, excluding the argument in support thereof.

5. Order of the Supreme Court of Oklahoma denying the Application for Rehearing.
6. Petition for Appeal.
7. Order allowing Appeal.
8. Application for Order of Supersedeas.
9. Order of Supersedeas.
10. Citation on Appeal.
11. Assignment of Errors and Prayer for Reversal.
12. Statement as to Jurisdiction.
13. Statement by Plaintiff in Error directing Defendants' in Error attention to Paragraph 2 of Rule 12 of the Revised Rules of the Supreme Court of the United States.
[fols. 376-377] 14. Appeal Bond.
15. This Praecipe.
16. Acknowledgment by Defendants in Error of the service upon them of the instruments, or copies thereof, described in Items 5, 6, 7, 9, 10, 11, 12 and 13 of this Praecipe.

D. H. Culton, Coleman Hayes, Clarence H. Ross, Charles C. McDugald, Warren T. Spies, S. A. L. Morgan, Counsel for Plaintiff in Error.

Dated: June 24th, 1954.

Service of the foregoing Praecipe is acknowledged this June 24th, 1954.

T. Murray Robinson, Counsel for Panoma Corporation.

Floyd Green, Counsel for Corporation Commission of Oklahoma.

[fol. 378] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 379] IN SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA, Appellant

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

ORDER NOTING PROBABLE JURISDICTION—November 8, 1954

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 8, 1954.

(8832)

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
JUL 6 1954
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

STATEMENT AS TO JURISDICTION

D. H. Culton,
Coleman Hayes,
Clarence H. Ross,
Charles C. McDugald,
Warren T. Spies,
S. A. L. Morgan,
The American National Bank Building,
Amarillo, Texas,
Counsel for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	6
Opinion below	2
The "statute" involved	2
Questions presented	6
Statement of the case	8
Panoma's contract with Natural	9
Panoma's "realization" at the contract price	12
The proceeding in which the Panoma Order was entered and the impact of the Order	13
The review in the state court	15
Jurisdiction	17
The federal questions presented are substantial	18
Interstate Commerce	18
The recent Phillips case	19
Discrimination	21
Due process	25
Manner in which federal questions were raised	26
The state court's interpretation of the contract is "manifestly wrong"	28
Conclusion	31
Appendix "A"—Opinion of the Supreme Court of the State of Oklahoma	33
Appendix "B"—Report of the Corporation Commission of the State of Oklahoma dates December 9th, 1946	54
Appendix "C"—Report of the Corporation Commission of the State of Oklahoma dated February 4th, 1947	62
Appendix "D"—Report of the Corporation Commission of the State of Oklahoma dated May 17th, 1951	67

Table of Cases Cited

Page

Ancient Egyptian Arabic Order v. *Michaux*, 279 U.S. 745 27
Broad River Power Company v. *South Carolina*, 281 U.S. 537 31
Cities Service Oil Company v. *Peerless Oil and Gas Company*, 340 U.S. 179 4
Dahnke-Walker Milling Company v. *Bordurant*, 257 U.S. 282 20
East Coast Lumber Terminal v. *Town of Lebanon*, 174 F. 2d 106 23
Hoover and Allison Company v. *Evatt*, 324 U.S. 652 30
Hughes Brothers Timber Company v. *Minnesota*, 272 U.S. 469 19
Lake Erie and Western Railway Company v. *Public Utilities Commission*, 249 U.S. 422 18
Lemke v. *Farmers Grain Company*, 258 U.S. 50 20
Memphis Natural Gas Company v. *Beeler*, 315 U.S. 649 31
Michigan-Wisconsin v. *Calvert*, 345 U.S. 157 29, 31
Natural Gas Pipeline Company of America v. *Panoma Corporation, et al.*, 203 Okla. 35, 220 P. 2d 279 3
New York Transit Company v. *New York*, 303 U.S. 573 31
Norris v. *Alabama*, 294 U.S. 587 30
Panhandle Eastern Pipe Line Company v. *Robert S. Calvert, et al.*, 347 U.S. 157 5
Phillips Petroleum Company v. *Oklahoma*, 340 U.S. 190 4
Phillips Petroleum Company v. *State of Wisconsin*, — U.S. —, 22 Law Week 4281 5, 29, 31
Public Utilities Commission v. *Attleboro*, 273 U.S. 83 20
Rogers v. *Alabama*, 192 U.S. 226 23
Shafer v. *Farmers Grain Company*, 268 U.S. 199 20
·246 U.S. 457 31
Southern Wisconsin Railway Company v. *Madison*,
Sunday Lake Iron Company v. *Wakefield*, 247 U.S. 350 23

Page

Torrance v. *Florida*, 188 U.S. 519 23
United States v. *Public Utilities Commission*, 345 U.S. 295 20, 21
Williams v. *North Carolina*, 325 U.S. 226 30
Williams v. *Ruffy*, 96 U.S. 176 18
Wisconsin v. *Phillips Petroleum Company*, 205 F. 2d 706 20
Yick Wo v. *Hopkins*, 118 U.S. 356 22

STATUTES AND OTHER AUTHORITIES CITED

Constitution of the United States:

Article I, Section 8
Fourteenth Amendment 7

Order of the Corporation Commission of the State Oklahoma State Constitution
of Oklahoma Number 19,514, dated December 9th, 1946 3
Order of the Corporation Commission of the State of Oklahoma Number 19,702, dated February 4th, 1947 3
Order of the Corporation Commission of the State of Oklahoma Number 24, 745, dated May 17th, 1951

United States Code:

Title 15:

Section 717, et seq. (52 Stat. 821, as amended) 20
Section 717c 20
Section 717d 20

Title 28:
Section 1257(2) 18

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

v.

PANOMA CORPORATION, ET AL.,
Appellees.

APPEAL FROM THE SUPREME COURT OF OKLAHOMA

STATEMENT AS TO JURISDICTION—Filed June 15th, 1954

In compliance with Rule 12, Rules of the Supreme Court of the United States, as amended, appellant Natural Gas Pipeline Company of America (Natural) submits its statement particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the opinion and judgment of the Supreme Court of Oklahoma (the state court), in which Natural was plaintiff in error and the Panoma Corporation (Panoma) and the Corporation Commission of the State of Oklahoma (the Commission) were defendants in error.

I.

Opinion Below

The opinion of the state court from which this appeal is taken has not yet been reported. A copy of the majority opinion reflecting the views of five members of the court and a copy of the minority opinion representing the views of four members of the court are attached hereto as Appendix A.

II.

The "Statute" Involved

Appellant in this proceeding challenges the validity, as applied to its purchases of residue gas from Panoma, of two orders of the Commission held valid by the opinion and judgment of the state court. Those orders are No. 19,514 (basic order) and No. 24,745 (the Panoma order), which interprets such basic order and applies same to the purchase of residue gas by Natural from Panoma.

The basic order (App. B) requires:

> "1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead, or less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch."

The decretal portions of the Panoma order (App. D) are as follows:

> "1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with Order No. 19,514, by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas here-

tofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

"2. That Natural Gas Pipeline Company of America does not comply with Order No. 19,514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base of 16.5 pounds per square inch absolute pressure, and it is directed to desist from so doing and is directed to comply with said order.

"3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America."

In its opinion and judgment the state court affirmed the Panoma order issued on May 17, 1951, copy of which is attached hereto as Appendix D. Such order was purportedly based on the basic order issued December 9, 1946, copy of which is attached hereto as Appendix B. The basic order had theretofore been interpreted and its application to certain operations of Phillips Petroleum Company (Phillips) in its Order No. 19,702 (Phillips order) had been determined by the Commission, copy of which is attached hereto as Appendix C. The basic order and the Phillips order, respectively, were affirmed by the state court in a consolidated proceeding, 203 Okla. 35, 220 P. 2d 279. In due course this court considered and upheld

the basic order in *Cities Service Oil Co.* v. *Peerless O. & G. Co.*, 340 U. S. 179, and considered and upheld the Phillips order in *Phillips Pet. Co.* v. *Oklahoma*, 340 U. S. 190, as applied to the issues and facts involved in those cases.

The basic order was directed to the producer, not to the purchaser, and required the producer to obtain a price of 7¢ per m.c.f. at the wellhead on a stated pressure base for all natural gas produced from the Guymon-Hugoton Field in Texas County, Oklahoma. In the Phillips order the Commission held that Phillips was *complying* with the basic order for the reason that the price received by Phillips from the sale of residue gas to Panhandle Eastern Pipe Line Company (Panhandle) plus the sums received from the liquid constituents extracted from the natural gas prior to the delivery of the residue gas to Panhandle aggregated 6.9855¢ per m.c.f., the approximate equivalent of the wellhead price fixed in the basic order. Under Phillips' contract with Panhandle, Phillips received from the latter 4.1716¢ per m.c.f. for the residue gas. Phillips also received from the sale of liquids extracted from its natural gas an additional 2.8138¢ per m.c.f. Thus, the total realization by Phillips was 6.9855¢ per m.c.f. It was not contended in either the *Cities Service* case or the *Phillips* case that the Commission had the power to fix a price of residue gas sold at the outlet side of a natural gasoline plant, at the intake of an interstate pipeline system, for immediate transportation to other States.

In the Panoma order, the Commission held that Panoma was *violating* the basic order, notwithstanding the substantially identical handling of the natural gas by Panoma as the handling by Phillips. The sales contract between Panoma and its purchaser, Natural, was substantially identical in its terms with the contract between Phillips and Panhandle. Under each contract the producer owned the

gas reserves, drilled and operated the wells, gathered the natural gas from the various wells, and transported it several miles to a gasoline plant owned by the producer at which the liquefiable constituents were extracted and retained or sold by the producer and the residue gas only was sold for immediate transportation to other states. Panoma was paid by Natural 5.12¢ per m.c.f. on the pressure base set forth in the basic order, which added to the amounts received from the sale by Panoma of the liquid constituents theretofore removed (4.181¢ per m.c.f.) aggregated 9.301¢ per m.c.f., as compared with 6.9855¢ per m.c.f. received by Phillips for the constituents of its natural gas. Thus, the Commission held that Panoma is *violating* the basic order though receiving 9.301¢ per m.c.f., but that Phillips is complying with the same order when receiving only 6.9855¢ per m.c.f. for its natural gas![1]

Not only did the Commission hold that Panoma was violating the basic order by paying the contract price, 5.12¢ per m.c.f. on residue gas, but it directed Natural to pay Panoma 7¢ per m.c.f. for all natural gas temporarily delivered by Panoma into Natural's compressor station (where the pressure was increased and the natural gas returned to Panoma at Panoma's gasoline plant), with no deduction in volume for shrinkage occasioned by Panoma's

---

[1] The contract involved in the Phillips order is one of the identical contracts considered by this court in *Panhandle Eastern Pipe Line Co.* v. *Robert S. Calvert et al.*, 347 U.S. 157, in which this court held that the sale on the outlet side of Phillips' gasoline plant and delivery through a meter station directly into Panhandle's interstate pipeline system was a part of interstate commerce and could not be taxed by the State of Texas because in violation of the Commerce Clause. That contract is also one of the contracts involved in *Phillips Petroleum Co.* v. *State of Wisconsin*, — U.S. —, decided on June 7, 1954, 22 Law Week 4281, in which this court held that the sale of residue gas, after the producing, gathering and processing of the natural gas had been completed, is a sale in interstate commerce and that under the Natural Gas Act such sale is within the exclusive jurisdiction of the Federal Power Commission.

extracting the liquids, no allowance for the sums received by Panoma for the liquids extracted and no deduction for gas used by Panoma for fuel in its gasoline plant. This amount (7¢ per m.c.f.) when added to the sums received by Panoma for the liquid constituents (4.181¢ per m.c.f.) aggregates 11.181¢ per m.c.f., as compared with 6.9855¢ per m.c.f. received by Phillips. Not content, however, with requiring Natural to pay the increased price (7¢ per m.c.f.) for *future* deliveries of residue gas by Panoma, the Commission directed Natural to pay Panoma the sum of $1,334,960.50, representing the difference between 7¢ per m.c.f. and the amount actually paid by Natural to Panoma under its contract for residue gas (5.12¢ per m.c.f.) delivered *prior* to the entering of the Panoma order; and the Commission directed Panoma to discontinue deliveries to Natural under its contract unless the latter paid that sum to Panoma within 20 days from the date of the order!

III.

Questions Presented

1.

Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of the Federal Constitution, to apply a basic order fixing the wellhead price of raw natural gas to a purchase by Natural from Panoma of residue gas only—the constituent remaining after the natural gas has been produced, gathered and processed and valuable liquid hydrocarbons have been removed and retained or sold by Panoma, the producer—where the purchase is made, the residue gas is delivered, and title thereto passes at the point of intake into Natural's interstate pipeline system for immediate and continuous transportation in interstate commerce.

2.

Whether, consistently with the Equal Protection Clause of the Fourteenth Amendment, a general order of the Commission (the basic order) prohibiting producers from producing raw natural gas from the formations unless the same be sold at a wellhead price of 7¢ per m.c.f. on a stated pressure base may be so applied as to prevent Panoma from continuing the sale to Natural of residue gas only on the outlet side of Panoma's gasoline plant for delivery into Natural's interstate pipeline system, for immediate transportation in interstate commerce, at a price which added to the amounts received by Panoma from the sale of the liquid constituents removed at the gasoline plant aggregates 9.301¢ per m.c.f., and requiring Natural to pay Panoma a price for the residue gas which added to such amounts received from the sale of the liquids as would aggregate 11.181¢ per m.c.f., when the Commission in applying the same basic order to a sale by Phillips, another producer from the same field selling under a substantially identical contract, holds that Phillips is complying with the basic order when it receives from the sale of the residue gas to Panhandle a price which added to the amounts received from the sale of the liquid constituents aggregates only 6.9855¢ per m.c.f. on the same pressure basis.

3.

Whether the Commission has the power, consistently with the Due Process Clause of the Fourteenth Amendment, in a purported application of the basic order which was directed to Panoma as producer and not to Natural as purchaser, to impose on Natural, as the purchaser of residue gas only, at the outlet of Panoma's gasoline plant and at the point of intake into Natural's interstate pipeline system, an obligation operating retrospectively to pay

Panoma for residue gas purchased by Natural prior to the order purporting to impose such obligation the sum of $1,334,960.50, representing the difference between the price of 7¢ per m.c.f. applied to the volumes of gas delivered temporarily into Natural's custody at Natural's compressor station (to be compressed and returned to Panoma) and the contract price paid by Natural to Panoma for residue gas delivered at the outlet of Panoma's gasoline plant, on pain of termination of deliveries by Panoma, when at the time Natural purchased and Panoma delivered such residue gas there was no order of the Commission fixing, or purporting to fix, the price of such residue gas at the point of delivery or otherwise applying to the conditions under which Natural received delivery of and obtained title to such residue gas from Panoma.

IV.

Statement of the Case

By the basic order, directed to producers of natural gas and not to purchasers of the residue, the Commission required that no gas be taken from the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, and sold "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas," measured on a stated pressure base. Thereafter, in the same proceeding it entered the Phillips order, an interpretation and application of the basic order, in which it held that the basic order meant

> ". . . to *prohibit the production* of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said order, if same were sold, but if not sold, that said gas should be *so utilized and/or sold*, that the producer would

> *realize* therefrom the *equivalent* of 7¢ per thousand cubic feet at the wellhead. . . ." [2]

In that order the Commission held that Phillips was not injured by the application of the 7¢ price fixed by the basic order "since it is already presently realizing approximately that amount at this time." That realization, as shown by the findings contained in the order, was 4.1716¢ per m.c.f. from the sale to Panhandle of the residue gas and 2.8138¢ per m.c.f. from the sale of the liquefiable constituents extracted by Phillips at its gasoline plant prior to the sale of the residue gas, which aggregated 6.9855¢ per m.c.f. *The Phillips contract with Panhandle was in all essential terms substantially identical with Panoma's contract with Natural except as to the prices received by the producers.*

Panoma's Contract With Natural

On December 1, 1946, Harrington & Marsh (assignors of Panoma) entered into a contract with Natural, for the sale only of the residue gas constituent of the production from its wells drilled and to be drilled on 78,000 acres in the Guymon-Hugoton Field up to a maximum of 76 million cubic feet daily. By that contract, Natural, a natural gas company, purchased such gas for immediate transportation in interstate commerce to states other than Oklahoma and sale in such states for ultimate public consumption. Buyer was to pay therefor 6¢ per m.c.f. until July 1, 1951, then 7¢ for a 5-year period, and 8¢ for the remainder of the contract period with certain adjustments based on B.t.u. content. These prices, however, were based on measurement at 16.4 lbs. When adjusted to measurement at 14.65 lbs., they are 5.359¢, 6.253¢ and 7.146¢, respectively.

[2] All emphasis herein by italics is supplied.

Sellers, however, expressly "*reserved*" the right (as did Phillips in its contract with Panhandle) to extract from the gas to be delivered under the contract the nitrogen, helium, natural gasoline, butane, propane, and other hydrocarbons except methane, together with any methane necessarily removed in the process of recovering the other hydrocarbons. They agreed, as did Phillips in its contract with Panhandle, that their gasoline plant for recovering such hydrocarbons (to be constructed on Natural's pipeline on the discharge side of Natural's compressor station) would be maintained efficiently. The terms describing the physical handling of the gas and determining the point at which the title to the residue gas passed to Natural were:

> "Sellers shall deliver gas hereunder *into the custody* of Natural and Natural shall *first receive the custody* of same, at the intake side of its Station 1, at a gauge pressure of not less than 150 pounds per square inch. The gas shall be compressed at said station by Natural according to the operating practice which it may from time to time follow, but not in excess of a gauge pressure of 800 pounds per square inch. Natural shall, after compression, then *redeliver* said gas to Sellers' gasoline plant at an average daily temperature not in excess of 95° F. and shall use all reasonable effort to keep such gas free from compressor lubricating oil. Sellers shall be entitled to all hydrocarbons removed from the gas by such compression provided the collecting thereof be at their sole cost and risk. *Sellers shall*, after treatment at their gasoline and dehydration plants, *redeliver* the gas *into* Natural's pipeline at the outlet of said plants at a temperature within 5° F. of a temperature at which the gas is received by Sellers at the inlet of said plants, provided Sellers shall not be required to reduce the temperature of such gas below 70° F. A metering station to be installed and operated by Natural as provided in Article Twelfth hereof shall be located near the outlet of said plants

> *at which point title* to the gas *shall pass to Natural;* except, the gas required by Natural for its compressor station operation shall be metered separately at a point at or near said station and title thereto shall pass to Natural as used."

The quality of the gas for which Natural was to pay the contract price was set forth in the contract in the following language:

> "The gas delivered hereunder *at the metering equipment* of Natural shall, subject to the standards in this contract expressed, be natural gas as produced in its natural state, *except:* that Sellers shall treat the gas for recoverable constituents as in Article Fifth herein provided[3] and shall, if necessary, treat such gas in order to bring it within the standards of purity hereinafter in this Article provided."

Such standards of purity included freedom from liquids, a maximum sulphur content and a minimum B.t.u. content.

Clearly this contract is one for the sale of the residue gas only, delivered at the meter station located at the outlet of Panoma's gasoline plant and the intake of Natural's pipeline system.

Harrington, President of Panoma, who had been engaged in the gas business for many years, explained that the placing of the gasoline plant on the discharge side rather than on the intake side of the compressor station was *for the mutual benefit* of Natural and Panoma; that otherwise Natural would have a higher compression ratio, and that *it is more economical for Panoma to extract the liquids when the pressure of the gas has been raised to six to eight hundred pounds;* and that the delivery of raw gas into Natural's compressor station was only a delivery into Nat-

[3] Article Fifth dealt with the reservation by sellers of nitrogen, helium, natural gasoline, butane, propane, etc.

ural's "custody,"—not a sale. He acknowledged that title passed at the meter station and said "*that's our point of sale*"; that "obviously" the sale was of residue gas and not raw natural gas; that the price Natural pays is not for the volumes of gas delivered into Natural's compressor station but for the volumes of gas measured after the gas has gone through Panoma's gasoline and dehydration plants; and that the quality of the gas for which Natural pays "obviously" is not the quality of the gas that goes into the compressor station but that of the gas which goes through the meter. When his attention was called to the fact that a part of the gas which went into the compressor station was used by Panoma for fuel in Panoma's gasoline plant, for which Panoma paid Natural nothing, he testified:

> "It's *our* gas except it's in *their* custody. It's in your custody *to be returned to us.*"

Panoma's "Realization"
at the Contract Price

During the period from October, 1948, through December, 1950, Panoma produced from its wells 70,992,632 m.c.f. of natural gas, measured at a pressure base of 14.65 pounds. It realized from the sale of liquids extracted therefrom $2,968,405.33, equivalent to 4.181¢ per m.c.f. of raw gas, and from the sale to Natural of the residue the sum of $3,634,523.74, equivalent to 5.12¢ per m.c.f. of raw gas. Its total receipts from sales of all constituents, $6,602,929.07, were, therefore, the equivalent of 9.301¢ per m.c.f. for all natural gas produced from Panoma's wells, as compared with 6.9855¢ realized by Phillips from the constituents of its gas.

The Proceeding in which the Panoma Order was Entered and the Impact of the Order

On January 30, 1951, Panoma instituted a proceeding against Natural before the Commission in the form of an application for an interpretation by the Commission of the basic order. In the application Panoma asserted that since the effective date of the basic order Natural had continued to purchase gas from Panoma and had paid therefor a sum less than the price fixed by such order; that Panoma had made demand on Natural to pay the price provided by said order, and that "notwithstanding the fact that said order is applicable to said gas, it has refused to do so." The application concluded:

> "That applicant herein does not desire to continue to deliver gas in violation of said order and, therefore, requests that this Commission determine: first, whether or not its deliveries are a violation of said order; and second, whether or not it should discontinue such deliveries if such deliveries are in violation of said order."

The prayer was that the Commission "determine the issues herein presented and issue an appropriate order in respect thereto."

In its response Natural set up the provisions of the contract, alleging that the gas had been handled as therein provided; that the parties had faithfully performed the obligations of the contract; that Panoma sold none of the production covered by its contract with Natural at the wells or elsewhere in its natural state; and that Panoma realized (through the sale of liquid hydrocarbons extracted at Panoma's plant and from the sale of residue gas to Natural) more than 7¢ per m.c.f. for its natural

gas, the price fixed under the basic order as interpreted in the Phillips order.

Natural asserted that if the order were interpreted as requiring Panoma to realize for the residue constituent of the gas (the methane) the wellhead price fixed by the basic order for raw natural gas produced, without due allowance for the sums received by applicant from the sale or utilization of the other constituents, and if, under the facts, the Commission should require that Panoma cease to deliver such residue gas to Natural under the contract, such order (1) would be discriminatory, arbitrary and void, and contrary to the provisions of all applicable statutes authorizing action by the Commission, (2) would be violative of certain sections of the Oklahoma Constitution and the Fourteenth Amendment to the Constitution of the United States, (3) would impose a discriminatory and unlawful burden upon interstate commerce, and (4) would be an attempt to regulate interstate commerce, in violation of the provisions of Section 8 of Article I of the Constitution of the United States (the Commerce Clause); and that to the full extent of its interest in the proper construction of such order, Natural invoked the protection of such constitutional provisions.

The Commission by the order here involved imposed on Natural an obligation to pay Panoma for the residue gas 7¢ per m.c.f. for the quantity of *raw* natural gas delivered by Panoma *into Natural's compressor station.* Natural was directed, *within 29 days, to "comply" with the basic order by paying to Panoma the difference between the amount it had paid Panoma and the amount the Commission held Panoma was entitled to receive for gas theretofore delivered* so that the total amount paid for gas "delivered" during the period covered by such payments would equal 7¢ per m.c.f. for the amount of raw natural gas "*delivered*

to said compressor station." Panoma was ordered to cease delivering gas to Natural unless Natural should pay such difference within 20 days.

The additional payment required of Natural for past deliveries amounts to $1,334,960.50. That sum, added to the $6,602,929.07 received by Panoma from the sales of extracted liquids and from the sales of residue to Natural at the contract price would give Panoma a total realization from the constituents of its natural gas of 11.181¢ per m.c.f.,—60% higher than the Phillips realization. This differential would of course, continue in the future.

The basic order deals only with *sales* of raw natural gas at the wellhead. It does not purport to deal with deliveries into temporary custody in the nature of bailments. The Commission did not find (nor could it find under the evidence) that Natural purchased the raw gas delivered into its custody at the compressor station. On what legal basis, therefore, could the wellhead price be applied to a delivery into Natural's compressor station for the temporary purpose stated? The effect of the order is to require Natural to pay not only the wellhead price fixed for raw gas for the quantities of residue gas to which Natural acquires title at the meter station but also that it pay for the volumes of gas represented by the shrinkage resulting from the removal of liquid hydrocarbons reserved by Panoma and the gas used by Panoma as fuel in its gasoline plant, title to which never passed to Natural.

The Review in the State Court

Natural in due course instituted a proceeding in the Supreme Court of Oklahoma (the State Court) for a review of the Panoma order; and on September 15, 1953, that Court, by a sharply divided vote, 5 to 4, affirmed the Commission's order (App. A).

The majority of the Court (in an opinion by Justice Welch) affirmed the order on a theory entirely different from that announced by the Commission. So far as the opinion can be rationalized, the majority of the Court proceeded on one of two theories, each inconsistent with the other and both inconsistent with the Commission's theory. In total disregard of the plain terms of the contract and the intent of the contracting parties as reflected by the uncontradicted evidence, the Court came up with the amazing suggestion that Natural purchased the *raw* natural gas (referred to in the majority opinion as "rough" gas) either (a) at the wellhead or (b) while still in the producing formations! The contract is not ambiguous, and it is clear, as a matter of law, that the majority's wavering, ambiguous and uncertain interpretation is "manifestly wrong."

Four members of the Court, in an opinion by the Chief Justice, vigorously dissented. They insisted, among other things, that Natural at no time purchased the raw gas; that the contract plainly stated that title to the gas purchased passed to Natural at the meter station and that at such point the reserved liquid hydrocarbons had been extracted; that by the contract Panoma had specifically *reserved* the right to extract nitrogen, helium, natural gasoline, etc.; that Panoma had received $2,968,405.33 from its extracted liquids and $3,634,523.74 from the sale of residue to Natural, aggregating $6,602,929.07, or 9.301¢ per thousand cubic feet; that Panoma had received more than the 7¢ required and for that reason Natural owed Panoma nothing.

The views of the dissenting justices were forcefully expressed in the following extract from the opinion:

> "This Court is given the authority by Section 29, Article IX of our Constitution to exercise its own

independent, judgment as to both the law and the facts of an appeal involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of this State. Such assertion is made in this case. I reiterate that when it appears from the testimony that the producer has received over nine cents for his gas when he had only to receive seven and when under the plain terms of the contract the producer has retained for his own use and benefit certain elements of the gas from which he gets 45% of the total value of all the gas after it has been through the dehydration plant it is contrary to fundamental conceptions of justice to say that the buyer of the dehydrated gas shall pay 7¢ for the raw gas and not receive credit for the profit received from the other constituents of the gas. He did not intend to sell the hydrocarbons. The Corporation Commission was without authority to make a new contract for the parties."

It was also stated in the dissenting opinion:

"Neither the Constitution, Acts of our Legislature or any decision of this Court provide a penalty for purchasing residue or dehydrated gas at any price. Since the Commission has not provided for this situation by its orders, it cannot assess such a penalty after the taking. Such action on its part is clearly a violation of the due process clause of both the Federal and State Constitution."

V.

Jurisdiction

Natural, as plaintiff in error, instituted a proceeding for a review of the Panoma order in the Supreme Court of Oklahoma, the highest Court in the State in which a decision could be had. That Court, on September 15, 1953, handed down its opinion and entered judgment affirming

the the Commission's said order. Natural seasonably filed a petition for rehearing in the Court below, which petition was overruled by that Court on March 23, 1954. Natural's petition for appeal to the Supreme Court of the United States was allowed by the Chief Justice of the State Court on June ..., 1954.

The jurisdiction of the Supreme Court of the United States to review the decision of the Court below in this proceeding by direct appeal is conferred by Title 28, Section 1257 (2), United States Code. Appellant has challenged the validity, as applied to its activities, of certain orders of the Corporation Commission of the State of Oklahoma on the ground that they are repugnant to the Const'tution of the United States and the decision of the State Court is in favor of their validity. Such orders of a State regulatory body are "statutes" of the State within the meaning of Section 1257 (2) of the Code. *Williams* v. *Ruffy*, 96 U. S. 176, 183; *Lake Erie & Western Ry. Co.* v. *Public Utilities Com.*, 249 U. S. 422.

VI.

The Federal Questions Presented Are Substantial

1. *Interstate Commerce*

The contract of the parties clearly provides, as a matter of law, notwithstanding the statements in the majority opinion as to the point of sale, that Natural purchases residue gas at the outlet of a gasoline plant exclusively for immediate transportation in interstate commerce. The facilities of Natural were constructed *only* for that purpose. The contract was subject to the obtaining of certificates from the Federal Power Commission authorizing the construction of such facilities and such transportation.

Natural has no facilities for sales in Oklahoma and makes no sales in Oklahoma. When the residue gas enters Natural's meter station, the gas has been produced; it has been gathered to a central point; it has been processed through a gasoline plant; the liquefiable constituents have been separated and sold. The residue gas entering the meter station can go nowhere else, *physically or contractually*, from the point of purchase except to Natural's markets in Iowa, Nebraska, Illinois and Indiana.[4] The gas is not merely sold interstate. The sale is an integral part of interstate commerce itself.

The Recent Phillips Case

The opinion of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, No. 280 (decided June 7, 1954), 22 Law Week 4281, is conclusive of this question. The operations of Panoma as shown by the record in this case are exactly of the same character as are the operations of Phillips as shown by the record in that case. Phillips held leases covering many thousands of acres; so does Panoma. Phillips produced gas from those leases through its own wells; so does Panoma. Through extensive gathering systems owned by it, Phillips "gathered" the gas produced from its wells to its own gasoline plant; so does Panoma. Phillips "processed" the raw gas at its gasoline plants by separating the liquefiable constituents from the residue; so does Panoma. Phillips, at the outlets of its gasoline plants, sells its residue to Panhandle and to Michigan-Wisconsin exclusively for immediate transportation to other States; Panoma sells its residue at the outlet of its gasoline plant to Natural for immediate transportation to other States. Phillips' sales to Panhandle and those to Michigan-Wis-

[4] Cf. *Hughes Bros. Timber Co.* v. *Minn.*, 272 U.S. 469, 475-6 (1926).

consin are at wholesale; so are those from Panoma to Natural. Under a long line of authorities,[5] as pointed out by the Court of Appeals for the District of Columbia in *Wisconsin* v. *Phillips Petroleum Co.*, 205 F. 2d 706, 710:

"It follows that no State can regulate those sales."

Here the lack of power in the State to fix the price of gas sold for interstate transportation is reenforced by the fact that Congress, by the Natural Gas Act,[6] has provided a Federal authority to exercise that function; and even if the fixing of the price on such sales constituted only a regulation of a local activity affecting commerce (which it clearly is not), the procedure provided by that Act would negate any State power with respect thereto. Under this Court's opinion in *Phillips* v. *Wisconsin*, Panoma is a natural gas company. The Natural Gas Act provides that all rates and charges of any natural gas company shall be "just and reasonable" (15 U. S. C. 717c); the Federal Power Commission is vested with exclusive power to determine the reasonableness of such rates—if too high, the rate may be ordered reduced, and if too low the Commission may authorize an increase (15 U. S. C., Sec. 717d).

When prices on sales of a commodity in interstate commerce are to be regulated, the regulation affects the interest of those who live in consuming States and provide *an outlet for the commodity* (thereby giving value to the commodity), as well as the interest of those who produce the commodity, and authority for such regulation must be obtained from Congress which can consider the matter with impartial regard for the interests of the people of all

[5] *Public Utilities Com.* v. *Attleboro*, 273 U.S. 83 (1926); *U.S.* v. *Public Utilities Com.*, 345 U.S. 295 (1953); *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282; *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50 (1922); *Shafer* v. *Farmers Grain Co.*, 268 U.S. 189 (1925).

[6] 52 Stat. 821, as amended; 15 U.S.C., Sec. 717, et seq.

the States that are affected. *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189, 202. Since Congress has already provided a tribunal with power to exercise that function, such tribunal is vested with exclusive jurisdiction over the subject. *U. S.* v. *Public Utilities Com.*, 345 U. S. 295 (1953).

It is obvious that the Corporation Commission of the State of Oklahoma has, in disregard of the Commerce Clause, through the issuance of so-called minimum price orders, attempted to acquire jurisdiction on behalf of a producing State over the sale of gas in interstate commerce made at the outlet of a gasoline plant for immediate transportation in interstate commerce. Such a sale has been recently and conclusively held to be subject to the regulatory jurisdiction of the Federal Power Commission under the Natural Gas Act. The assertion of this jurisdiction by producing States contrary to law will, if sustained, result in an unfair and unauthorized levy on the citizens of the consuming States.

2. *Discrimination*

Beyond controversy, Panoma realizes gross from the constituents of its gas as produced 9.301¢ per thousand cubic feet. The Commission has required Natural to make an additional payment to Panoma of $1,334,960.50 because of 70,992,632 m.c.f. delivered to Natural's compressor station prior to the promulgation of the Panoma order, amounting to an additional 1.88¢ per m.c.f. Therefore, if the order against Natural should be permitted to stand, Panoma would receive from the constituents of its natural gas 11.181¢ per m.c.f.; and Panoma would continue to receive that price on future deliveries.

Yet the basic order fixes the price of the raw gas at only 7¢ at the wellhead, and the Commission in the Phillips order, interpreting its basic 7¢ order, held that Phil-

lips was complying with that order when it received from the constituents of its raw gas, sold separately, an aggregate realization of 6.9855¢.

The Commission in the Panoma order brushed aside the Phillips order, which interpreted the basic order, with the statement that such order was not entered as a fieldwide order, but was entered as affecting a part thereof only and on the application of an owner of a portion of the wells. Commenting on the Phillips order, the Commission added that it

> ". . . *does not feel it is bound* herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19,702."

All these observations are equally true of the Panoma order. It was not entered as a fieldwide order; and it was entered on the application of an owner of only a portion of the wells. It is directed solely at Natural. Since the Phillips order continued in effect, Panhandle, with the Commission's full approval, continued to purchase residue gas from Phillips at 4.1716¢ while Natural was required by the order to pay Panoma 7¢ per m.c.f. for natural gas. Phillips can produce its gas when selling all the constituents for 6.9855¢ but Panoma cannot produce its gas unless it obtains 11.181¢ per thousand cubic feet for the constituents of its gas! The full impact of this difference falls on Natural and its customers, and, in the final analysis, on the consumers of gas in Iowa, Nebraska, Illinois, Indiana and Wisconsin.

Since *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886), this Court has steadfastly held that when a law or State regulation, fair on its face and impartial in appearance, is so applied as practically to make unjust and unreasonable

distinctions between persons in similar circumstances, the denial of equal justice is within the prohibition of the Equal Protection Clause of the Fourteenth Amendment; that the purpose of the Equal Protection Clause is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute, or by its *improper execution through duly constituted agents, Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 352 (1917); that an actual discrimination in the application of a law "is as potential in creating a denial of equality of rights as a discrimination made by law"; and that equal protection of the laws may be denied by a State through the Legislature, through the courts or through its executive or administrative offices, in any of which events the action of the State violates the Equal Protection Clause of the Fourteenth Amendment, *Torrance* v. *Florida*, 188 U. S. 519, 521 (1903); *Rogers* v. *Alabama*, 192 U. S. 226, 231 (1904). In *East Coast Lumber Terminal* v. *Town of Lebanon* (2 Cir.), 174 F. 2d 106, 112 (1949), Judge Learned Hand, for the Court, stated:

> "It has indeed been the law for over sixty years" (citing *Yick Wo v. Hopkins*) "that the Amendment covers the unequal enforcement of valid laws, as well as any enforcement of invalid laws; . . ."

The State Court devotes much of its opinion to a discussion of the academic question of whether Panoma profits from the extraction of the liquid hydrocarbons from the natural gas before selling and delivering the residue to Natural. In that connection the Court makes the statement that in answering that question the processing cost to Panoma must necessarily include the cost of operating the gasoline plant "plus some contribution to the cost of constructing the plant or to depreciation, which is not in-

cluded in Natural's calculation and argument." The question of whether or not Panoma makes a profit is wholly immaterial. The amount received by Phillips from the liquid constituents was a gross price. Neither the Commission nor the Court gave any consideration to whether Phillips earned a profit from operating its natural gasoline plant. It is equally immaterial whether Panoma earned a profit from similar operations. However, the observation in the opinion that cost of operating the plant and depreciation was given no consideration in Natural's calculation and argument is in flagrant conflict with the undisputed evidence. Panoma's own auditor brought in an exhibit showing that after deducting all operating expenses incurred in gathering and processing, all general and administrative expenses applicable to the gathering system and the gasoline plant, and depreciation on the gathering system and gasoline plant ($622,366.07), Panoma still received *net* from the sale of all the constituents of its natural gas 7.04¢ per m.c.f.[7]

Not only does the Panoma order operate to prefer Panhandle in its purchases from Phillips and thus to discriminate against Natural in its purchases from Panoma; it operates to discriminate in favor of Panhandle's customers and to discriminate against Natural's customers, all of whom purchase in interstate commerce. The attempt to prefer the interstate commerce in residue gas of Panhandle to the interstate commerce in residue gas of Natural is an unlawful burden on Natural's such interstate commerce and violative of the Commerce Clause, as well as the Equal Protection Clause.

No more glaring example of discrimination and denial

[7] Thus, at the contract price, Panoma receives 9.301¢ gross and 7.04¢ net for the constituents of its gas. If the Panoma order is permitted to stand, Panoma will receive 11.181¢ gross and 8.92¢ net per m.c.f. for such constituents.

of equal protection in applying a statute or regulatory order has ever been presented to this Court.

3. *Due Process*

Not only does the order discriminate as against Natural as to future deliveries under its contract with Panoma; it denies Natural the right to purchase *any* gas under the contract except upon the condition that it pay to Panoma the sum of $1,334,960.50, imposed retroactively on Natural for deliveries of residue gas prior to the issuance of the Panoma order. The order operates to force Natural to hand over as a windfall to Panoma that sum of money or otherwise to lose its right to receive residue gas under its contract with Panoma. No such penal sanction has been imposed on any other purchaser.

Moreover, if it were true, as the State Court intimated, that Natural has purchased the gas in its natural form in place in the ground, the Commission would have no power, consistently with the Due Process Clause, to enter the Panoma order. The Commission has entered no general order fixing the price of natural gas in place in the formations underground. It has no more power to do that than it has to fix the selling price of a lease, or that of the land itself.

It is important to note also that the Commission had promulgated no general order by which it purported to fix the price of residue gas sold and delivered at the outlet of a gasoline plant; nor had it, prior to the Panoma order, entered any order dealing with natural gas delivered into temporary custody for a special purpose without sale. The dissenting members of the Court below, under these circumstances, properly insisted that the Panoma order was a violation of due process.

VII.

Manner in Which Federal Questions Were Raised

The Federal questions herein discussed were raised by Natural at the first opportunity. In its application filed with the Commission, Panoma did not contend that the basic order required payment of the wellhead price for gas delivered into custody for compression, nor did it contend that Natural purchased raw natural gas, either at the wellhead or in place in the ground. It merely alleged that since the entry of the basic order, Natural had continued to purchase "gas" from Panoma and had paid therefor a sum less than the price fixed by the Commission's order.

Natural, in its response to the application, set up the provisions of its contract with Panoma and alleged that if the basic order were interpreted as requiring Panoma to realize for the residue gas constituent of its gas the price fixed by the Commission in that order for natural gas at the wellhead, without allowance for the sums received by Panoma from the sale of other constituents of the gas, or if, under the circumstances, the Commission should require that Panoma cease to deliver residue gas to Natural under the contract, the order would be violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Commerce Clause of the Constitution of the United States.

In the petition in error filed by Natural in the Supreme Court of Oklahoma, Natural alleged that the Panoma order unreasonably discriminated against Natural by applying to it a different rule from that applied in the Phillips order while still adhering to the latter as a correct interpretation of the basic order; that the Panoma order denied to Natural the equal protection of the law and deprived Natural of its property without due process of law, in violation of

the Fourteenth Amendment and constituted a regulation of and imposition of a burden on interstate commerce in violation of the Commerce Clause.

The state court, in its opinion, treated the contract between Panoma and Natural as constituting a sale of natural gas to Natural either at the wellhead or in place in the ground. Having done so, the court evaded a discussion of any of the constitutional questions raised by Natural, except by the brief reference made to the Commerce Clause and a summary rejection of the constitutional questions raised. The four members of the court who concurred in the dissenting opinion recognized that, under a proper interpretation of the contract, the questions of equal protection and due process were also present in the case.

Natural, in the petition for rehearing filed in the state court, urged that the majority opinion was based on the erroneous assumption that natural (raw) gas was delivered by Panoma to Natural at the wells; that the court disregarded positive and undisputed proof that Panoma from the utilization and sale of its gas realized 7.04¢ per m.c.f. after allowance for all direct costs and depreciation.

The state court cannot deprive Natural of the right to a determination by this Court of the serious constitutional questions here involved by holding, notwithstanding the undisputed evidence to the contrary, that Natural's purchase is of raw natural gas at the well or in the ground. Nor can it defeat Natural's constitutional rights by failure to discuss constitutional questions presented to it and the basic questions of fact on which constitutional rights are asserted. *Ancient Egyptian Arabic Order* v. *Michaux*, 279 U. S. 745 (1928).

VIII.

The State Court's Interpretation of the Contract Is "Manifestly Wrong"

The state court obviously recognized the fallacy of the Commission's holding that the basic order imposed on Natural an obligation to pay Panoma 7¢ for the wellhead gas because of the circumstance that, after being gathered, that gas was delivered temporarily into Natural's "custody" (a bailment only) for compression and return to Panoma prior to the extraction by Panoma of the constituents of the gas that had been "reserved" by Panoma. The court also must have recognized that the basic order applied only to the wellhead price of raw gas, not to the price of the residue constituent thereof sold at the outlets of gasoline plants; that even if the basic order had operated to fix the price of residue sold at the outlets of gasoline plants, it would be violative of the Commerce Clause if applied to a sale such as that from Panoma to Natural, made for immediate transportation to other states, and, therefore, part of the integral process of interstate commerce itself; that it would be discriminatory as applied to Natural; and that it would operate to take Natural's property without due process of law.

The opinion of the majority of the state court can be explained only by the assumption that it made a studied attempt to avoid the impact of the Commerce Clause, the Equal Protection Clause and the Due Process Clause by distorting the contract provisions in an effort to place Natural's purchase either at the wellhead or in place in the ground, notwithstanding express provisions of the contract to the contrary.

The extremity to which the majority went is illustrated by the statement that

> "These contract provisions tend strongly to support the Commission's finding and to indicate that in truth Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought."

The Commission made no such finding and arrived at no such conclusion.

The majority also stated that the contract in substance provides that

> "Seller should deliver the gas direct from the wells to Natural's initial or primary pipe."

Such statement is contrary to the undisputed facts. Natural owns no pipe, initial, primary or otherwise, between the wells and the compressor station. Many of Panoma's wells were as much as 15 or more miles distant from the compressor station and the gasoline plant. Under the contract, Panoma obligated itself to produce the raw gas, gather it and deliver it to Natural's compressor station. It is undisputed that it did so.

Not only did the state court ignore or distort the contract provisions, but it placed a construction on the contract which is in direct conflict with that placed upon substantially identical contracts by the parties thereto and by this Court.[8]

The contract itself is clear and unambiguous. It expressly provides that title to the residue gas shall pass to

---

[8] *Michigan-Wisconsin* v. *Calvert*, 345 U.S. 157; *Phillips Petroleum Co.* v. *Wisconsin*, 22 Law Week 4281.

Natural at its metering station located at the outlet of Panoma's gasoline plant which is at the inlet of Natural's interstate transmission system. As a matter of law, the contract must be construed as providing for a sale of only the residue gas by Panoma to Natural at that point.

It is clear from the contract that at the time of the sale and delivery of the residue gas Panoma had performed all of the functions of producing, gathering, and processing the raw gas for the removal of the liquefiable constituents therefrom, which constituents under the terms of the contract Panoma had expressly reserved from the sale to Natural. The uncontradicted evidence shows that the parties to the contract so construed it, and both performed the contractual obligations in good faith on that basis. Harrington, the President of Panoma, testified that Panoma sold Natural only the residue gas; that the gas belonged to Panoma until it passed through the latter's gasoline plant; and that the meter station at the intake of Natural's pipeline system was the point of sale at which the title passed. The wholly arbitrary construction of the contract by the Commission and the state court for the obvious purpose of depriving Natural of its constitutional rights is in no wise binding on this Court.

When substantial constitutional rights are asserted, whether under the Equal Protection Clause, the Due Process Clause, the Commerce Clause, or any other provision of the Constitution, this Court will, of course, exercise its own judgment as to the facts and the law. *Hoover & Allison Co.* v. *Evatt*, 324 U. S. 652, 659 (1945); *Williams* v. *N. Carolina*, 325 U. S. 226, 236 (1945); *Norris* v. *Alabama*, 294 U. S. 587, 590 (1935). When the holdings of a state court are based on an interpretation of a contract, this Court will interpret the contract to see if the decision rests on a fair or substantial basis. Constitutional rights can-

not be destroyed by evasive misinterpretation. *Broad River Power Co.* v. *S. Carolina*, 281 U. S. 537, 540 (1930); *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, 654 (1942). And, while this Court will be inclined to accept an interpretation of a contract by a state court if it is a reasonable one, that interpretation will be rejected if it is "manifestly wrong." *Southern Wisconsin Ry. Co.* v. *Madison*, 240 U. S. 457, 461 (1916); *N. Y. Transit Co.* v. *N. Y.*, 303 U. S. 573, 593 (1938).

Four members of the state court in the dissenting opinion correctly stated that the majority opinion is *wrong;* that Panoma was not selling raw gas at the well but was selling only residue gas at the meter station.

Conclusion

Appellant respectfully submits that enough has been presented to demonstrate that this appeal brings before this Court questions under the Federal Constitution that are far-reaching and important, both in terms of legal principles and of economic impact upon the consumers of gas throughout the nation. The opinion of the state court is in irreconcilable conflict with a long line of decisions by this Court, including the recent decisions in *Michigan-Wisconsin* v. *Calvert*, 347 U. S. 157, and *Phillips Petroleum Co.* v. *State of Wisconsin, et al.*, decided June 7, 1954, 22 Law Week 4281. If the judgment of the state court is sustained, the effect will be a discrimination in application of the Commerce Clause as between natural gas companies in exactly the same circumstances. Under identical facts, the prices for gas sold by Panoma to Natural would be fixed by the Corporation Commission of the State of Oklahoma while the prices charged Panhandle by Phillips would be regulated by the Federal Power Commission under the Natural Gas Act. Such a result might provide

a means whereby other gas producting States may avoid the jurisdiction of the Federal Power Commission over the sales in interstate commerce of gas by natural gas companies. Such a situation is unthinkable.

Is it possible, notwithstanding the holdings of this Court on June 7, 1954, that the Federal Power Commission can be ousted of its exclusive jurisdiction to fix the price on residue gas sold at the outlet of a gasoline plant for immediate transportation in interstate commerce through the use by a producing state of a minimum price fixing order as is attempted in this case?

Appellant urges the Court to make it clear that producing states' minimum price orders cannot supersede the jurisdiction of the Federal Power Commission in regulating the price of residue gas sold under the circumstances here present. This issue can never be presented more clearly than in this case.

Respectfully submitted,

D. H. Culton,
Coleman Hayes,
Clarence H. Ross,
Charles C. McDugald,
Warren T. Spies,
S. A. L. Morgan,
Counsel for Appellant.

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

NATURAL GAS PIPE LINE COMPANY OF AMERICA,
Plaintiff in Error,

vs.

PANOMA CORPORATION and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Defendants in Error.

SYLLABUS

1. The grant of power to the Corporation Commission under 52 O. S. 1941, § 239 to regulate the taking of natural gas from a common source of supply "so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom", by necessary implication includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes, and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

2. The provisions of 52 O. S. 1941, § 233, give the Corporation Commission authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

3. When the Corporation Commission by valid order fixes the minimum wellhead price which must be paid for natural gas taken from a designated gas field or gas pool, that order supersedes any existing contract by which a purchaser is taking natural gas from such gas field or gas pool at a lesser price; and from and after the effective date of such order such purchaser owes a legal duty to pay for all gas taken, as much as the minimum price fixed by such order.

4. When, upon proper hearing, the Corporation Commission finds that a natural gas purchaser is taking natural gas from the producer at less than the minimum wellhead price fixed by valid order of the Corporation Commission, then the Commission may order that such purchaser pay at least as much as the fixed minimum price for all gas thereafter taken, with provision that if such purchaser fails to so pay for such gas that such purchaser must cease taking gas from such gas field; and this rule applies even in case the gas purchaser is taking gas under an existing written contract executed prior to the Commission's price fixing order, which contract fixed the purchase price at less than the minimum fixed by the order.

5. When upon proper hearing the Corporation Commission finds that a purchaser of natural gas from a gas field or gas pool covered by price fixing order has taken gas therefrom and paid therefor a price or sum less than the legal minimum price, then the Corporation Commission may ascertain the amount of gas so taken at such lesser price and may ascertain the balance necessary for such purchaser to pay as a "back pay" sum to bring such purchaser into full compliance with the price fixing order by paying for all such gas a sum and price equal to the minimum price established by the price fixing order.

6. When the Corporation Commission has properly determined the amount of a "back pay" sum legally due to be paid by a natural gas purchaser, to constitute compliance with a valid order fixing a minimum price, the Corporation Commission may direct that such sum paid, with provision that if such payment is not made the said purchaser shall cease to take gas from such gas field or gas reservoir, and such an order does not constitute the rendering of a money judgment beyond jurisdiction.

7. Orders of the State Corporation Commission in administering and enforcing compliance with a valid order fixing minimum wellhead price of natural gas produced in a certain field in Oklahoma, did not constitute an undue interference with Interstate Commerce and such orders are not violative of the Commerce Clause of the Federal Constitution though such natural gas after production and

compression and further processing is to go into purchaser's pipeline system for transportation to other states for final sale to consumers.

8. Record examined, and held, that the findings of the Corporation Commission that the purchaser here involved was a purchaser of natural gas from the named gas pool or gas reservoir, and that such purchaser had taken and was taking gas from such reservoir at less than the minimum purchase price theretofore fixed by valid order, are all sustained by the evidence and by the stipulation of the parties.

Application to the Corporation Commission by Panoma in connection with taking of natural gas from certain leases in Texas County, by Panoma, and sold to Natural. From the order made thereon Natural appeals.

AFFIRMED

For Plaintiff in Error: S. A. L. Morgan, D. H. Culton, Warren T. Spies, and Coleman Hayes, of Okla. City, Okla.

For Defendant in Error, Panoma Corporation: Robinson, Shipp, Robertson & Barnes, Richardson, Shartel & Cochran, Blakely Murphy, all of Okla. City, Okla.

For Corporation Commission: Floyd Green, Ferrill Rogers, both of Oklahoma City, Okla.

WELCH, *J.*

The Panoma Corporation owns extensive oil and gas leases in the Guymon-Hugoton gas field in Texas County, Oklahoma. Gas in large quantities is taken therefrom daily pursuant to a contract between Panoma and The Natural Gas Pipeline Company of America.

This contract was made and this gas taking began before the State Corporation Commission by its orders Nos. 19514 and 19515 fixed the price at not less than 7¢ per thousand cubic feet at the wellhead for all natural gas taken from the producing structures or formations of said gas field.

Those orders were upheld by the Supreme Court of Oklahoma and by the Supreme Court of the United States

in 1950. *Cities Service Gas Company* v. *Peerless Oil & Gas Co., et al.*, 203 Okla. 35, 220 P. 2d 279. *Cities Service Gas Company* v. *Peerless Oil & Gas Company, Corporation Commission of Oklahoma, et al.*, 340 U. S. 179, 95 L. Ed. 156. Thus, since the effective date of the aforesaid orders, January, 1947, no one could legally take natural gas from that field at a price less than 7¢ at the wellhead.

The authority of the state in the exercise of its police power to regulate the taking of natural gas is well settled. See *Julian* v. *Capshaw* (1930), 145 Okla. 237, 292 P. 841; *Wilcox Oil & Gas Co.* v. *State* (1933), 162 Okla. 89, 19 P. 2d 347; *Sterling Refining Co.* v. *Walker* (1933), 165 Okla. 45, 25 P. 2d 312; *Russell* v. *Walker* (1932), 160 Okla. 145, 15 P. 2d 114; *Patterson* v. *Stanolind Oil & Gas Co.* (1938), 182 Okla. 155, 77 P. 2d 83; (appeal dismissed, 35 U. S. 376, 83 L. Ed. 231); *Croxton* v. *State* (1939), 186 Okla. 249, 97 P. 2d 11; *Denver Producing & Refining Co.* v. *State* (1947), 199 Okla. 171, 184 P. 2d 961; *Quinton Relief Oil & Gas Co.* v. *Corp. Comm. of Oklahoma* (1924), 101 Okla. 164, 224 P. 156, and *Cities Service Gas Co.* v. *Peerless Oil & Gas Co., et al.* (1950), 203 Okla. 35, 220 P. 2d 279.

The contracted price Natural was to pay Panoma for gas taken under the contract was less than 7¢, but the contract was definitely subject to any valid order of the Corporation Commission. The contract in Article Fourteenth provided that:

> "This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation."

See also, the following language of this Court in *State* v. *Waterfield*, 167 Okla. 209, 214, 29 P. 2d 24, 29:

> "Thus it may be seen that changes in the obligations of contracts may be made when made as a proper exercise of the police power, not because constitutions may be suspended by police power, but because the right to legislate in the exercise of that power is a part of the existing law of the state at the time of the execution of the contract; and as such enters into the terms and provisions of the contract in the same manner that statutes prescribing procedure become a part of the contract.
>
> "It may be said that all property rights including contracts are subject to the proper exercise of the police power, and in that respect it is often said that individual rights to property being subject to the exercise of this power are qualified as distinguished from absolute."

See, also, *Home Building & Loan Ass'n.* v. *Blaisdell* (1933), 290 U. S. 398, 78 L. Ed. 413, 54 S. Ct. 231.

So in 1951, after the aforesaid Price Order of Commission had been fully sustained, Panoma, after demand, made this application to Commission to require Natural to comply with said order to pay a wellhead price of 7¢ for gas taken and to be taken by Natural from Panoma's leases in said field in Texas County.

Natural responded, in substance, that by reason of the terms of the contract Commission's price order was not applicable to the gas taken by Natural; and that if proper analysis be made there was no violation of the price order in the taking of gas from this field by Panoma and Natural because such taking under the contract resulted in an aggregate or gross return to Panoma equal to a wellhead price of 7¢ or more.

Upon trial Commission made its findings and entered its order. Commission found, among other things, 1, that since the effective date of the price order January 1, 1947, no one could legally take gas from this field at a price less

than 7¢ per thousand cubic feet; 2, that the uncertainty as to the finality of that order, created by the appeal therefrom to the Supreme Court of Oklahoma, and the Supreme Court of the United States, justified Panoma in delivering gas from these leases to Natural without regard to said price order, or at less than the minimum price under the contract until said order was finally affirmed; 3, that nevertheless the taking of gas from the structure and formation in these leases at a price less than 7¢ at the wellhead was illegal; 4, that Natural should pay to Panoma the difference between the lesser amount actually paid for gas taken before June 1st, 1951, and the sum or price due at 7¢ for each thousand cubic feet; 5, that the actual amount of gas so taken from the leases was stipulated and was determined in accordance with such stipulation; 6, that therefore Natural should in twenty days pay the sum due Panoma; 7, that strict enforcement of the price order was necessary for the prevention of waste; 8, that the contract between Panoma and Natural could not impair or defeat the effect of the order; 9, that the acceptance of the contract contention would cause and invite discrimination and general breakdown of the regulation preventing waste, etc.

Commission ordered in effect that Natural should pay for all gas received on and after January 1, 1951, at the sum and rate of 7¢ per thousand cubic feet at the wellhead. Commission further ordered that Natural should pay to Panoma a "back-pay" sum sufficient to equal 7¢ per thousand cubic feet for all gas taken by Natural prior to January 1, 1951, at a lesser price.

Commission further ordered that if Natural should fail after 20 days to pay such "back-pay" sum to Panoma, or should fail to pay as much as 7¢ wellhead price for gas taken after January 1st, 1951, that Panoma should cease any delivery of gas to Natural.

On this appeal Natural contends as upon its response below, with the further contention that Commission's "back-pay" order has the effect of a money judgment which Commission was not authorized to enter.

Natural's contention that Commission's price order was not applicable to the gas taken by Natural was based on

Natural's construction of the contract to be a purchase of only a part of the natural gas taken from Panoma's leases. Since Commission did not agree with that construction we must refer to some of the details of the contract, but we deem it not necessary to quote all of the contract of many pages.

As items of background the contract shows that Natural owns an extensive pipeline system by which it transports gas from Texas and Oklahoma to consumers in the Chicago metropolitan area and elsewhere; that with contemplated expansions the system will require on maximum days up to three hundred forty (340,000,000) million cubic feet of gas per day; that Natural desires to purchase from seller (Panoma) as a part of its system needs, a daily average of seventy-six (76,000,000) million feet of gas; that seller owned gas rights in more than seventy-eight thousand (78,000) acres of land in the Guymon-Hugoton field, described by legal description of each tract of land in the contract, and that seller desires (quoted from contract) "to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells * * * and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract."

We should here observe that the rough gas as it comes from the well is not suited to transportation in Natural's pipeline, and that the gas must go through a refining or cleaning or improving process before Natural can transport it and sell it to its ultimate consumers. It is essential that such processing be done before the gas is finally taken into Natural's pipeline. That item was considered in the contract and the plan was set out in substance as follows: Seller should deliver the gas direct from the wells to Natural's initial or primary pipe. Natural would then pass it into its own compressor station on or near the seller's premises where Natural would compress the gas, thence it would in turn pass the gas to a processing plant to be constructed and operated by seller.

Panoma was definitely obligated to construct said plant at a cost of several million dollars, and to efficiently operate it and to process the gas through such plant so as to deliver the gas back to Natural into its pipeline system in a carefully specified condition. When the gas was thus returned to Natural it was to be metered and that measurement was the basis of payment by Natural to Panoma, with provision that title passed to Natural at that point. There was provision in detail as to the operation of this processing plant by Panoma, and in case of failure of Panoma to properly and efficiently operate the plant, Natural had the right to take over such plant and add any needed equipment and operate the plant for seller, all at seller's expense, plus 10% supervising charge, and keep custody and operation of the plant until sellers could give satisfactory assurance as to future operation by sellers.

In processing the gas from Natural's compression station or plant through seller's processing plant the seller was to remove certain detailed constituents of the rough gas including water and a sufficient portion of the hydrocarbons so as to produce a certain specified condition in the gas and so as to prevent the formation of hydrates and/or the condensation of hydrocarbons in Natural's pipeline system. But seller was prohibited from removing hydrocarbons to the extent of reducing the heating value of the gas below a fixed figure.

All constituents so removed from the rough gas which had any value was to be kept by sellers as their own property, or for sale by them for their own account.

The contract provided that it was contemplated by the parties that all of the gas underlying seller's reserves of 78,000 acres would be required to fulfill this sale contract, and that all such gas was reserved for deliveries under this contract, and that all of the entire gas reserve was dedicated to the purpose of this sale contract, and none of such gas under the entire area should be sold to any other person. To this last provision there were minor exceptions including or preserving the rights of landowner—lessors to have gas for domestic usage, and the right of sellers to

use gas required for operation of the leaseholds, but we regard those items as being immaterial here.

Natural places great emphasis on part of these contract provisions and argues that in fact it did not purchase from Panoma all of the gas produced from the wells and first delivered to Natural to enter its compressor. Natural contends that since Panoma thereafter extracted part of the constituents of the rough gas that Natural bought only a part or portion of the whole gas, and much emphasis is placed on the provision that it is only the gas in its final purified form which was metered and title passed to Natural which Natural bought, and in that manner took from the gas wells. Natural contends, and the proof shows, that Panoma marketed certain of the extracted constituents from the gas and that Panoma received substantial sums therefor. In final analysis it is the contention of Natural that the sum it paid to Panoma for the gas taken into its pipeline plus the gross amount received by Panoma for the sale of extracted ingredients amounted to as much or more than 7¢ for each cubic feet of natural gas taken from the wells, and that therefore the taking from the gas reservoir was not in violation of Commission's price order.

This calculation by Natural would add the gross sum received by Panoma for all sales of extracted ingredients as if the gross sum amounted to a payment to Panoma on or for the wellhead gas. That calculation, however, overlooks these facts: (1) that such payments to Panoma are more in the nature of payments for manufactured commodities than payments for natural gas, (2) that no account is taken of the great cost of building, maintaining and operating the expensive plant required in the process and required by the contract; (3) that, as between Panoma and Natural, Panoma has earned the value of these extracted ingredients by treating or processing Natural's gas to bring it to the precise condition required by Natural in its business, and specifically required by the contract, (4), the well known fluctuation in market price of such commodities which would result in Panoma operating its plant at different times at more or less profit, or more or less loss.

This contention by Natural does not take into consideration any part of the cost of the processing operation. In order to determine whether the value of the extracted ingredients exceeded the processing expense, or whether Panoma made a profit on the processing operation, the calculation must necessarily include the cost of operating its processing plant plus some contribution to the cost of construction of the plant, or to depreciation, which is not included in Natural's calculation and argument.

Furthermore, this contention by Natural does not give sufficient emphasis to the contract provision that Panoma must construct and operate the plant, whether profit or loss is realized from the sale of the extracted constituents of the rough gas.

Panoma contends, and there is evidence to support it, that proper calculation of the operating cost of processing the gas, with proper charge for depreciation of the plant, or proper cost amortization, with maintenance and replacement costs, would result in showing a loss, or little if any profit at all, and might very well at different periods show an actual loss; that in any event the amount of profit or loss would fluctuate over varying periods, and could not enter into such a calculation as that proposed by Natural, because it would result in different calculations over varying periods, and would result in Natural's paying one price in one period to bring the aggregate up to 7*c* and a different price over a different period to bring such aggregate up to 7*c*. Thus Panoma points out that Natural would be operating upon a different pay basis for each month, or for each quarter or for each semi-annual or annual period. And Panoma takes the view that Natural in effect and in fact is the purchaser of natural gas from the gas wells and not merely a purchaser of part only of the gas produced.

We think a consideration of all of the provisions of the sale contract is necessary to decide this controlling question. We think the narrow view of Natural was properly denied by Commission. It seems well demonstrated by the overall plan that Natural, if not in fact purchasing all of the gas located in Panoma's gas reserve, was at least pur-

chasing all of the gas actually produced and run into the primary line of Natural and thence to its compressor station. The temporary return of the gas to Panoma after Natural had compressed it was a custody or possession for a particular purpose, that is, to clean up or purify or process the rough gas for one purpose only, and that was to redeliver the gas in a stipulated condition to Natural. This processing may or may not have resulted in a profit to Panoma in the future. Nevertheless, that processing must be performed by Panoma. It is essential to Natural that it be done. The contract so provides, and in addition thereto the contract authorized Natural, in the event of unsatisfactory operation by Panoma, to take over the plant and operate it at the cost of Panoma plus 10% management expense.

Panoma produced the rough gas and delivered it to Natural. Thereafter when Panoma received back the gas and processed it and redelivered it to Natural, we regard that as merely a detail of the overall plan of processing the gas in selling and delivering it to Natural. We notice the fact that it was metered on this second delivery and that the expression was used that title passed at that point, but we do not consider that in any sense controlling, if it is even material in deciding the controlling question.

We deem it fair to assume, as apparently Commission assumed, that as between the contracting parties the recovery by Panoma of any salable products was to balance or offset the overall cost to Panoma of carrying out its obligation to Natural to place Natural's gas in proper condition to enter Natural's pipeline system and proceed to the burner tips of Natural's customers, with any loss in the processing to be suffered by Panoma, and any profit therein to offset the hazard of a loss, or the profit or chance of profit over one period to offset the loss or chance of loss during another period. Thus a similar situation would be created as if Natural, after first receiving the gas and compressing it, had employed or contracted with some other person to process its gas in exchange for the value of the extracted ingredients necessary to put the gas in the required condition for ultimate use by Natural.

The contract provides that Panoma desires to sell Natural all the gas underlying its entire gas reserves; and that Panoma had completed a number of gas wells and will drill additional wells and install gathering lines, etc., and operate the entire production, all for the purpose of delivering gas to Natural; and that it is contemplated by both parties that all the gas underlying Panoma's acreage will be necessary to cover Natural's requirements and to fulfill the sale contract; and that all of the entire gas production of Panoma is reserved for deliveries under the contract; and that all of Panoma's gas reserve is dedicated to the purpose of this sale contract; and that none of such gas shall be marketed to any other person; and reference is made to Natural's lien of dedication on Panoma's leaseholds themselves.

These contract provisions tend strongly to support Commission's findings and to indicate that in truth and in fact Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced from under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought.

We therefore agree with the conclusion of Commission that Natural purchased and took natural gas from this reservoir at less than 7¢ per thousand cubic feet wellhead price. The extent thereof was in the amount stipulated and therefore found by Commission.

There was some contention on the part of Natural that it did not take "natural gas" from the structures and formations of the Guymon-Hugoton field because the gas it finally took and paid for was not in fact "natural gas". This contention was based on the facts above set out. No authority is cited to sustain the conclusion that natural gas produced from the earth and transported to consumers who use and burn it as such, is changed into something different because of the fact that after it is taken from the well it is cleaned up and processed before final delivery to the ultimate consumer. Furthermore, the contract specifically provides that "the term 'gas' wherever used here-

in, shall mean natural gas;" with further statement which makes the word "herein" refer to all provisions of the comprehensive contract.

On this overall contention Natural cites *Phillips Petroleum Co.* v. *State*, included by consolidation with *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279. We have considered that cited authority, but do not find anything therein which might in any manner support the position and contention of Natural in this case. We deem it not necessary to further discuss the *Phillips* case.

In this case Natural was not a producer of natural gas, but it was a purchaser of natural gas produced by Panoma. The question here is whether Natural paid the necessary 7¢ per thousand cubic feet wellhead price. If Natural paid Panoma less than the proper 7¢ wellhead price, then there was a violation of the price order which was made and became effective after the contract was made, and the price order would govern and control over the contract price of less than 7¢. Upon that point, as above stated, we have approved the conclusion of the Commission.

Natural next contends that the order of Commission requiring Natural to pay to Panoma the "back pay" sum on all gas taken before January 1, 1951, amounted to a judgment for that sum of money in favor of Natural and against Panoma, and that the Corporation Commission was not authorized to enter any such money judgment.

We do not agree that the order of Commission was in any sense the rendition of a money judgment against Natural. It was merely a calculation and statement of the amount Natural should have paid for the gas taken before January 1, 1951, to comply with the price fixing order. There was no controversy as to the contract between the parties, nor as to the amount of gas Natural had received from the wells of Panoma, nor as to the amount Natural had paid on the purchase price thereof. By express provision of the contract, as well as by law, the contract was modified by the price order and the minimum wellhead price of 7¢ became a part thereof and Natural was obligated by law to pay that price of 7¢. The calculation and

statement of this "back pay" sum by Commission was merely a statement of the further sum Natural should pay to bring itself in full compliance with the minimum price requirement. Commission could not enforce it as a money judgment, however, this does not mean that Commission is without any power to enforce compliance with its valid price fixing order. As in case of any other valid order, Commission may require compliance therewith by any other order within its authority, so in this case, while Commission could not require Natural to pay this sum, it could prohibit Natural from taking further gas until it brought itself into compliance with the effective price order by making the payment. If it were otherwise Commission would be powerless to take any steps to require compliance with its valid orders in the highly important program of conservation, and might as well not make them.

We hold that the order as to this "back pay" sum was within the authority of Commission. This conclusion finds support in our statements in Cities Service, *supra*.

Natural further contends that the orders here involved constitute an undue interference with Interstate Commerce, and that such orders are violative of the Commerce Clause of the Federal Constitution.

We deny that contention on the authority of *Cities Service* case, *supra*. In that case it was contended that the action of the Corporation Commission in making and enforcing the specific wellhead price orders now involved in this case would so violate the Federal Constitution.

Speaking on that point the Supreme Court of the United States said: (95 L. Ed. 161-162)

> "The Commerce Clause gives to Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. (Citing authorities.) It is now well settled that a state may regulate matters of local concern over which Federal authority has not been exercised, even though the regulation has some impact on interstate commerce. (Citing authorities.) The only

requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. Nor should we lightly translate the quiescence of Federal power into an affirmation that the national interest lies in complete freedom from regulation. (Citing authorities.)

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation. (Citing authorities.)

"We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. Some industrial consumers, who get bargain rates on gas for 'inferior' uses, may suffer. But strong arguments have been made that the national interest lies in preserving this limited resource for domestic and industrial uses for which natural gas has no completely satisfactory substitute. (Citing authorities.) Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of

this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause. (Citing authorities.)"

Since the Corporation Commission had authority to make price fixing orders without violating the Federal constitution, then further orders within its authority designed to enforce compliance with such orders would likewise involve no violation of the Federal constitution. To hold otherwise would bring about the result that the Corporation could and did make this specific price fixing order as applied to the Guymon-Hugoton field and the making of the order was not in violation of the Federal Constitution, but that subsequent valid orders directing compliance with the price fixing order would so violate the Federal Constitution. Such a conclusion, to say the least of it, would be most peculiar and quite illogical. Therefore, and upon the foregoing authorities we find no merit in this contention.

The orders appealed from are affirmed.

JOHNSON, V. C., *J.*, and CORN, DAVISON and ARNOLD, *JJ.*, concur.

HALLEY, C. *J.*, and O'NEAL, WILLIAMS and BLACKBIRD, *JJ.*, dissent.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

NATURAL GAS PIPE LINE COMPANY OF AMERICA,
Plaintiff in Error,

vs.

PANOMA CORPORATION and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Defendants in Error.

HALLEY, C., *J.* (dissenting):

The majority opinion is affirming the Corporation Commission in this case is wrong. I am compelled to express a dissent.

On December 1, 1946, Natural Gas Pipe Line Company of America entered into a contract with D. D. Harrington and others who comprised a partnership doing business under the firm name of Harrington and Marsh. Panoma Corporation acquired all the interest of the partnership in the contract.

Under the contract Natural was to purchase gas from the partnership and pay for it until the first day of July, 1951 at six cents (6¢) per thousand cubic feet. The unit volume for the measurement of gas delivered under the contract was one cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60° F.) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch.

Panoma began the delivery of gas to Natural in August, 1948. This gas was paid for at a price basis of 5.12 cents per thousand cubic feet in accordance with the base provided by the Corporation Commission. From August 1948 to the end of 1950 Panoma received from Natural $3,634,523.74.

On December 9, 1946, the Corporation Commission issued an order which is as follows:

> "1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.
>
> 2. This order shall be effective as of January 1, 1947."

Not until January 30, 1951, did Panoma take any action in regard to this matter when it filed an application with the Corporation Commission for a hearing. As a result the hearings had on this application the Corporation Commission made an order that Natural pay Panoma the difference between the amount it had heretofore paid for such gas delivered to it by Panoma and the amount which the Commission said it should have paid for the gas herein determined, computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute and if Natural did not pay it Panoma should stop delivering gas to Natural. From this order Natural properly appealed.

The evidence taken at the hearing showed that Panoma had received from the sale of extracted liquids the sum of $2,968,405.33 in the period August 1948 to December 31, 1951. With the $3,634,523.74 received over the same period from Natural and the amount received from sale of liquids Panoma was paid a total of $6,602,929.07 or $.09301 per thousand cubic feet on 14.65 pressure base for all the gas disposed of.

The order of December 9, 1946 fixing the price that should be paid at the wellhead was made as if the producer of the gas was selling at the wellhead. In the instant case the producer, Panoma, was not selling at the wellhead.

At no time did Natural buy the raw gas (spoken of in the majority opinion as rough gas at the wellhead). The contract stated that title to the gas passed to Natural at

the meter station and at this point the hydrocarbons had been extracted.

The contract in Section One, Article V, specifically provided that Panoma reserved the right to extract from the gas nitrogen, helium, natural gasoline, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents.

The Corporation Commission only has the right to fix the price of gas as a conservation measure under the theory that if no price is fixed that the gas might be consumed in producing cheaper products and full benefit would not be received from the gas. We held that this right was given by implication in the 1915 Conservation Act, *Cities Service Gas Company* v. *Peerless Oil and Gas Company, et al.,* 203 Okla. 35, 220 P. 2d 279. The order did not attempt to guarantee the producer a profit of 7¢ a thousand and it had no right to attempt to do so. It only said it should not be sold for less than 7¢ per thousand at the wellhead. In my opinion under the evidence and the order of the Commission, Panoma received more than the 7¢ required and for that reason Natural owes Panoma nothing. There was no evidence that there was any waste in the use to which this gas was put.

If Natural is to be charged with the payment of 7¢ per thousand for gas at the wellhead then it should be credited with everything that was taken out of the gas as if it was done before it reached the wellhead since Natural only received dehydrated gas. It is no concern of the Corporation Commission as to what price is paid the producer. Their concern is with conservation and to see that the gas is not used in a manner whereby a natural resource would be dissipated without the State receiving the proper benefit.

This Court should not say that a purchaser of dehydrated gas which has constituents extracted to the extent of 45% of the value of the whole should be burdened with paying a fixed wellhead price without receiving any credit for the by-products. The order of the Corporation Commission of December 9, 1946 was not made with the contract in this case in mind. Neither was the contract written

with such an order in mind. The order and contract must be considered with the point in mind that the Commission was not guaranteeing a profit to the producer but was endeavoring so as to conserve the gas in this State in this particular area.

I am also of the opinion that the Corporation Commission had no authority to tell Panoma that it must not furnish Natural any more gas unless Natural paid them this $1,300,000. This was a matter for the courts. Our Constitution and Statutes at no place provide for the Corporation Commission taking the action it has in this case by saying to a purchaser of the gas you pay the producer $1,334,960.50 or else the source of supply of gas for many of your customers will be chopped off. The Natural had a binding contract with Panoma through its predecessors and that contract should be interpreted by the courts and not by a regulatory body. In *Southwestern Light and Power Company* v. *Elk City*, 188 Okla. 450, 111 P. 2d 820, we said that the Corporation Commission is without jurisdiction or power to enter or enforce a judgment or order adjudicating the claimed contracted rights of a consumer of electric current under a written contract with a utility to receive a stated reduction of rate and refund of money for electric current. The case at bar presents just as much the construction of contractual rights as in that case. I think that in this case as there the rights of the parties should be determined in courts of general jurisdiction. It is not a job for laymen.

The Corporation Commission has no right to tell the producer he could not sell constituents of raw gas separately. Strictly speaking all the order did was to say that when gas is sold at the wellhead it must bring not less than 7¢ per thousand cubic feet. If the producer desired to retain for his use and profit certain constituents he had a perfect right to do so and as long as there was a substantial compliance with the Commission order it should be sufficient to satisfy the Commission. This was its conclusion as to the right of the Phillips Petroleum Company when it disposed of certain elements of gas separately. In

that instance Phillips received 6.9855 cents per thousand cubic feet from all the constituents of the gas.

This Court is given the authority by Section 20, Article IX of our Constitution to exercise its own independent judgment as to both the law and the facts of an appeal involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of this State. Such assertion is made in this case. I reiterate that when it appears from the testimony what the producer has received over nine cents for his gas when he had only to receive seven and when under the plain terms of the contract the producer has retained for his own use and benefit certain elements of the gas from which he gets 45% of the total value of all the gas after it has been through the dehydration plant it is contrary to fundamental conceptions of justice to say that the buyer of the dehydrated gas shall pay 7¢ for the raw gas and not receive credit for the profit received from the other constituents of the gas. He did not intend to buy them. The producer did not intend to sell the hydrocarbons. The Corporation Commission was without authority to make a new contract for the parties.

In this case Natural complied with its part of the contract. It did not know what Panoma was receiving for the hydrocarbons that it retained. It had the right to rely on Panoma to comply with the Commission's rules as its contract with Panoma had been in existence four years and two months when Panoma's application was filed with the Commission. Furthermore it had been two years and a half before any action was taken by Panoma to question the position of Natural.

Neither the Constitution, Acts of our Legislature or any decision of this Court provide a penalty for purchasing residue or dehydrated gas at any price. Since the Commission has not provided for this situation by its orders, it cannot assess such a penalty after the taking. Such action on its part is clearly a violation of the due process clause of both the Federal and State Constitutions.

The producer cannot "have his cake and eat it too." If he is to sell his gas to the Pipe Line Company at seven

cents then he must of necessity account to the buyer for all the by-products or hydrocarbons. Under no interpretation of the contract can Panoma be the employee of Natural. In no way that you can analyze this case can the order of the Corporation Commission be sustained.

I respectfully dissent.

APPENDIX "B"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054 Order No. 19514

PEERLESS OIL AND GAS COMPANY, a corporation,
Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, and all OPERATORS, PRODUCERS AND TAKERS OF NATURAL GAS in the STATE OF OKLAHOMA, and particularly in the GUYMON-HUGOTON FIELD,
Respondents,

THE SCHOOL LAND COMMISSION OF THE STATE OF OKLAHOMA

and

TEXAS COUNTY LAND & ROYALTY OWNERS ASSOCIATION,
Interveners.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10:00 o'clock, a. m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas

County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Pruet, its attorney, the respondent Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of

the State of Delaware and duly authorized to transact business in the State of Oklahoma.

4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probable productive area of the Guymon-Hugoton pool in Texas County, Oklahoma, covers part of the following described townships, to-wit:

Townships:		Ranges:
1	North	12 to 17 E. C. M.
1, 2, 3 and 4	North	12 to 18 E. C. M.
	and	
5 and 6	North	12 to 19 E. C. M.

which area may be extended by the drilling of additional wells.

5. Peerless Oil and Gas Company is the owner of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of supply aforesaid, which oil and gas leases include leases covering

Section 8, Township 4 North, Range 16 E. C. M.,
Texas County, Oklahoma,

and

Section 5, Township 4 North, Range 16 E. C. M.,
Texas County, Oklahoma,

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of

Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton Oklahoma gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells or for the purpose of its own domestic use.

15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

16. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton Oklahoma gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

17. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

18. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of *Oklahoma Natural Gas Company* vs. *State*, 161 Okla. 104, 17 Pac. (2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

19. That the operation of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

20. A bona fide dispute has arisen between the applicant, Peerless Oil and Gas Company, a corporation, and respondent Cities Service Gas Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Section 5 and 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Section 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of 16.4 pounds ab-

solute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead, plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic feet delivered into the pipelines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

23. The persons and corporations operating pipelines and transporting natural gas out of the Guymon-Hugoton Oklahoma gas field own or control a greater portion of the oil and gas leases in said field and control the outlets for

natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton Oklahoma gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

24. There is no competitive market of natural gas in the Guymon-Hugoton Oklahoma oil field, but said market has been stifled by reason of the control of acreage and markets by the pipeline operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton Oklahoma gas field at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

25. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton Oklahoma field and out of the State of Oklahoma at a price which is far less than its replacement value.

26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers and contracts providing for different prices, terms and conditions.

27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton Oklahoma gas field under contracts containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

29. The operations of respondent, Cities Service Gas Company, constitute it a common carrier.

30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

32. The taking of natural gas from the Guymon-Hugoton Oklahoma field at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination against various producers in the field.

33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent, Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural

gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

2. This order shall be effective as of January 1st, 1947.

DONE AND PERFORMED by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND,
Chairman,
RAY O. WEEMS,
Vice-Chairman,
----------,
Commissioner.

ATTEST:
TOM MCMURRAY,
Secretary.

APPENDIX "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054 Order No. 19702

PEERLESS OIL AND GAS COMPANY, a corporation,
Applicant,

vs.

CITIES SERVICE GAS COMPANY, a corporation, and ALL OPERATORS, PRODUCERS AND TAKERS OF NATURAL GAS IN THE STATE OF OKLAHOMA, and particularly in the GUYMON-HUGOTON FIELD,
Respondents,

THE SCHOOL LAND COMMISSION of the State of Oklahoma and TEXAS COUNTY LAND & ROYALTY OWNERS ASSOCIATION,
Intervenors.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of January, 1947,

at 1:30 o'clock p. m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner, sitting, R. M. Williams, Attorney of Bartlesville and Harry Turner, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent, Peerless Oil & Gas Company, and Floyd Green, Conservation Attorney, appeared for the Commission.

After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 o'clock, p. m., for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral argument and being well and sufficiently advised in the premises, the Commission denied the application and therefore finds as follows:

"EXHIBIT A"

FINDINGS

1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbers 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

2. That this Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that protests have been filed to the granting of the order.

3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbers 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and trans-

ports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent of approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or leases from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

5. That applicants complain that paragraph 1 of Order No. 19514 and paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of nat-

ural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform price for the field, is permitting discrimination in price which adversely affects many producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses of one of Oklahoma's most valuable resources.

7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

8. That this application should be denied in the interest of preventing: (a)—economic waste of a great natural resource to wit: natural gas, (b)—actual physical waste of natural gas in the Hugoton Field, (c)—loss to the producers and royalty owners in said field, (d)—loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School Land Commission, (e)—the inequitable taking of natural gas from the common source of supply owned by all, (f)—discrimination as to prices paid throughout the field, which discrimination adversely effects many royalty owners and producers, (g)—the inefficient and wasteful utilization of natural gas.

9. That this application should be denied.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbers 19514 and 19515 heretofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

DONE AND PERFORMED this the 4th day of February, 1947.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND,
Chairman,
RAY O. WEEMS,
Vice-Chairman.
.....,
Commissioner.

ATTEST:
TOM MCMURRAY,
Secretary.
(SEAL)

APPENDIX "D"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3048 Order No. 24745

IN THE MATTER OF THE APPLICATION OF PANOMA CORPORATION FOR A CLARIFICATION OF ORDER NO. 19514, AND FOR AN ORDER OF THIS COMMISSION DIRECTING THE ACTION TO BE TAKEN BY APPLICANT AND NATURAL GAS PIPELINE COMPANY OF AMERICA UNDER AND PURSUANT TO SAID ORDER.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, on the application of Panoma Corporation for an order interpreting and enforcing Order No. 19514, issued by this Commission, at which time Natural Gas Pipeline Company of America requested that said cause be continued and the cause was then continued for hearing to the 5th day of April, 1951.

On the 5th day of April, 1951, said cause was again called for hearing on the application filed herein by Panoma Corporation and the response thereto filed by Natural Gas Pipeline Company of America. The applicant was represented by T. Murray Robinson, Wallace E. Robertson, Kent W. Shartel and Richard W. Fowler, its attorneys, and the respondent, Natural Gas Pipeline Company of America was represented by its attorneys, S. A. L. Moran, Warren Spies, D. H. Culton and Monnet, Hayes, Brown and Bullis, by Coleman Hayes; the Commission was represented by Floyd Green, Conservation Attorney, and no other persons appeared. All appearing parties announced ready for trial, and the applicant and respondent presented their evidence, and said cause was heard throughout the day of April 5, 1951, and continued for further hearing to April 6, 1951, and on the 6th day of April, 1951 the parties appearing as before, the Commission heard the arguments

of counsel and both parties rested, and the Commission closed the case and took the matter under advisement, authorizing counsel to file briefs in support of their respective positions.

Now, on this 17th day of May, 1951, the Commission having considered the matter in conference, and each of the Commissioners being fully advised as to the entire record and having considered all evidence introduced, the arguments of the parties and the briefs filed, and being well and sufficiently advised, is of the opinion that the Commission should act on the application to the following extent, and the Commission finds as follows:

Findings

1. That notice by publication of the filing of the application and the time and place of hearing thereon and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in the application and of the parties interested therein, and has jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That, pursuant to a contract dated December 1, 1946, Harrington & Marsh, the predecessors of Panoma Corporation, during August of 1948, commenced the delivery of natural gas from wells owned by them in the Guymon-Hugoton field in Texas County, Oklahoma, to Natural Gas Pipeline Company of America, and thereafter such deliveries were continued by Panoma Corporation as purchaser and successor to all of the properties, rights and obligations of Harrington and Marsh; that the parties hereto have agreed that all determinations by this Commission may be made as if said deliveries had at all times been made by Panoma Corporation.

3. That said gas was delivered, but not metered or measured, at a compressor station owned and operated by Natural Gas Pipeline Company of America and located in Texas County, Oklahoma; that the amount of gas so delivered could be and may at all times be computed although it is not there metered.

4. That the provisions of Order No. 19514 became effective as of January 1, 1947, and after said date, no gas produced therefrom could legally be sold or purchased in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price of less than seven cents (7¢) per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute pressure per square inch and does and did prohibit sales and purchases for any lesser amount.

5. That uncertainty as to the finality of this Commission's Order No. 19514 created by the appeal therefrom to the Supreme Court of the State of Oklahoma, and the Supreme Court of the United States justified applicant in continuing the delivery of gas, without receiving payment, concurrent with the delivery, at the minimum price fixed by this Commission, until the time said order was affirmed by the Supreme Court and the mandate of affirmance filed with this Commission; this Commission had no knowledge of the acts of the parties, which the Commission now finds were in violation of its order, until this proceeding was filed.

6. That deliveries or acceptance of gas in Oklahoma, produced from the Guymon-Hugoton field in Oklahoma, that are not in compliance with Order No. 19514 are prohibited by said Order and the deliveries of Panoma Corporation and receipt or acceptance by Natural Gas Pipeline Company of America are not in compliance with said order and are in violation thereof and should be stopped.

7. That the amount which the Natural Gas Pipeline Company was obligated to pay and should have paid to comply with this Commission's Order, was seven cents (7¢) for each thousand cubic feet of gas, measured at an absolute pressure base of 14.65 pounds per square inch, which the Panoma Corporation delivered to the Natural Gas Pipeline Company of America at its compressor station and such respondent has not paid such amount and has refused to pay such amount although requested to do so.

8. That the stipulated amount of gas so delivered by Panoma Corporation to Natural Gas Pipe Line Company of America at said compressor station to the first day of January, 1951, was 70,992,632 thousand cubic feet, and that

is the amount, so far as it can be determined, which was produced at the wellhead.

9. That a reasonable time hereafter in which to comply with said order is twenty (20) days, and Natural Gas Pipeline of America should, within 20 days from the date of this order, pay Panoma Corporation the difference between the amount it has heretofore paid for such gas delivered to it by Panoma and the amount which it should have paid for the gas as herein determined; computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute, and unless Natural Gas Pipeline Company of America makes such payment in compliance with said order during the period and in the manner provided herein, Panoma Corporation should be directed to thereupon stop delivering gas to Natural Gas Pipeline Company of America and to file with this Commission an application for a share in the available markets that are complying with the orders of this Commission.

10. The Commission further finds that Order No. 19702, entered upon the application of Phillips Petroleum Company, was not entered as a fieldwide order, but was entered as affecting a part thereof only and on the application of an owner of a portion of the wells in the field, and was based on facts presented to the Commission in support of the special relief or exception which the applicant in that case had requested; that therein the Commission specifically found that applicant "did not see fit to introduce any evidence as to profit or losses from the production of natural gas from the Guymon-Hugoton Field"; that this Commission does not feel it is bound herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19702; however since respondent's contention that such order is in conflict with the findings and judgment of the Commission herein, this Commission deems it appropriate to now find that when it entered its Order No. 19514 determining:

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugo-

ton field in Texas County, Oklahoma, at a price at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch",

that it applied to all producers, purchasers and takers of gas from said field, and that no sales or purchases of natural gas would be thereafter permitted in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch; that the minimum price thus established would govern at the wellhead and at any other point in said Guymon-Hugoton field at which said gas would thereafter be delivered by a producer to a purchaser, so that the owners of the gas within said reservoir, being the lessees and the lessors, and other persons owning an interest in the gas in place, would at all times from and after the issuance of said order, receive from the delivery of their gas, as owners and producers thereof, not less than the minimum price fixed by the Commission.

11. That Order No. 19514 should be strictly enforced for the prevention of waste, the prevention of which is the basic purpose of said order and Natural Gas Pipeline Company of America should not be permitted to plead its contract in avoidance thereof; and the contracts of the parties, neither by direction, implication or complication can defeat the effects of the order of this commission and to hold otherwise would cause and permit waste, and to adopt or accept the contentions of respondents would cause and invite discrimination and a general breakdown of the regulations preventing waste and protecting the correlative rights of the parties.

12. That to protect the correlative rights of the parties and to prevent waste, this order should be issued.

Order

It Is Therefore Ordered by the Corporation Commission of Oklahoma as follows:

1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with

Order No. 19514 by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base 16.5 pounds per square inch absolute pressure, and it is directed to desist from so doing and is directed to comply with said order.

3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 17th day of May, 1951.

CORPORATION COMMISSION OF OKLAHOMA,
/s/ REFORD BOND,
Chairman,
/s/ RAY O. WEEMS,
Vice-Chairman,
/s/ ROY C. JONES,
Commissioner.

ATTEST:
/s/ TOM McMURRAY,
Secretary.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
JUL 17 1954
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellant*

vs.

PANOMA CORPORATION ET AL, *Appellees*

Appeal from the Supreme Court of Oklahoma

REPLY TO MOTION TO DISMISS OR AFFIRM

D. H. CULTON
COLEMAN HAYES
CLARENCE H. ROSS
CHARLES C. McDUGALD
WARREN T. SPIES
S. A. L. MORGAN
Counsel for Appellant, Natural Gas Pipeline Company of America

Fort Worth Brief Printing Co., 126 South Main Street Phone FA-4070

INDEX

	Page
Preliminary Statement	1–3
I. Cities Service Gas Co. v. Peerless Oil and Gas Company is not applicable here	3–8
II. The Question of Discrimination	8–13
III. The Due Process Clause	13–14
IV. The Exlusive Jurisdiction of the Federal Power Commission	14–17
Conclusion	18

CASES CITED

Cities Service Gas Co. v. Peerless Oil and Gas Co., 240 U. S. 179	3-8, 13
Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 591	14
Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U. S. 498	14
Interstate Natural Gas Co. v. Federal Power Commission, 331 U. S. 682, 692	**7, 14**
Michigan-Wisconsin Pipe Line Co. v. Calvert, ... U. S. .....,	6
Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346 (1939)	5
Panhandle Eastern Pipe Line Company v. Calvert, ... U. S. ....., 74 S. Ct. 396	9, 13
Parker v. Brown, 317 U. S. 341 (1943)	5
Phillips Petroleum Co. v. State of Wisconsin, ...U. S. ....., 74 S. Ct. 795	2, 6, 7, 9-13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA, *Appellant*

vs.

PANOMA CORPORATION ET AL, *Appellees*

Appeal from the Supreme Court of Oklahoma

REPLY TO MOTION TO DISMISS OR AFFIRM

Preliminary Statement

Appellees do not challenge a single factual statement made by appellant in its Statement as to Jurisdiction. They do not attempt to justify the holding of the Oklahoma Commission that Natural incurs an obligation to pay Panoma 7c per m.c.f. for the raw natural gas of which Natural receives the temporary "custody" at Natural's compressor station but to which Natural does not obtain title. Nor do appellees attempt to defend the holding of the State Supreme Court that Natural does not purchase from Panoma residue gas at the meter station but purchases from Panoma raw natural gas, either at the wellhead or in the bowels of the earth. Significantly, they do not deny that the specific sale by Panoma to Natural here under considera-

tion is a "sale in interstate commerce of natural gas for resale," and that such sale is, at wholesale, to an interstate pipeline company for immediate and continuous flow through the interstate pipeline system of appellant until delivered to markets in other states, a field which Congress has preempted by the Natural Gas Act. *Phillips Petroleum Co. v. State of Wisconsin*, ... U. S. ..... (decided June 7, 1954), 74 S. Ct. 795.

Significantly, also, appellees do not deny that by its Order No. 19,702 (the Phillips order), interpreting and applying its basic price-fixing order (No. 19,514), the Commission found that Phillips Petroleum Company was complying with the basic price-fixing order when selling its residue gas to Panhandle Eastern Pipe Line Company at 4.1716c per m.c.f. since it received gross from all of the constituents of its gas an aggregate of 6.9855c per m.c.f. (which was approximately the 7c price fixed in the basic order), while in the order here appealed from, the Commission has so interpreted and applied the basic order as to find that Panoma violated the order by its sale to Natural of residue gas for 5.12c per m.c.f. even though Panoma receives from all the constituents of its gas 9.301c per m.c.f. Appellees do not cite any difference in factual situation as justification for this discriminatory application of the basic order.

Appellees amazingly assert that the validity of Order No. 19514 (the basic order) is not involved in this appeal. That is not so. Both the Commission and the state court have, in their own fashion, *applied* the basic order to the facts here involved, to-wit, the sale of residue gas by Panoma to Natural. It is their *ap-*

plication of the basic order to such sale, in the manner attempted, which is discriminatory against Natural as compared with the treatment accorded Panhandle in its purchases from Phillips, which violates Natural's rights under the Commerce Clause in that it purported to regulate a sale in interstate commerce, and which deprives Natural of the sum of $1,334,900.50 on penalty of having deliveries of residue gas in interstate commerce embargoed.

Appellees themselves in the motion describe the Panoma order as being an *enforcement* order. Clearly, the Commission is unlawfully attempting, through the Panoma order, to enforce its *basic* order dealing with the sale at the wellhead of raw natural gas to the purchase of residue gas made by Natural after the gathering operations have been completed.

I.

Cities Service Gas Co. v. Peerless Oil and Gas Company Is Not Applicable Here

In Subdivision I of such reply and motion, appellees argue that the holding of this Court in *Cities Service Gas Co. v. Peerless Oil and Gas Co.*, 240 U. S. 179, is *stare decisis* as to the application of the Commerce Clause to the transaction between Panoma and Natural. They do not contend, nor did the state court hold, that appellant has failed seasonably to invoke the protection of the Commerce Clause. The state court expressly recognized in its opinion that Natural is claiming the protection of that clause. The burden of appellees' argument seems to be that since the basic order

was sustained in *Cities Service v. Peerless*, the holding in that case is *stare decisis* as to all situations to which the Oklahoma Commission might thereafter attempt to apply such basic order through interpretative or enforcement orders, regardless of differences in factual situations.

Under Subdivision I of the motion, appellees say:

> "The validity of Order No. 19,514 of the Corporation Commission, referred to by appellant as the basic order, is not involved."

and, quoting at length from the Court's opinion in the *Cities Service* case, they argue that by such opinion, the validity of that order has been conclusively settled by this Court and is no longer open to review.

Natural does not challenge the validity of the basic order, abstractly considered, or as it was interpreted and applied in the *Cities Service case*. Its attack is on the order as it has now been interpreted and applied by the Panoma order (No. 24,745) from which order this appeal is prosecuted.

The *Cities Service* case, by the express limitation on the face of the opinion, was confined to *wellhead* sales of raw natural gas under the circumstances shown by *the record then before the Court*. That record showed that Cities Service Gas Company was a common purchaser of gas and a producer of gas, not only in the Guymon-Hugoton Field but also in other fields of Oklahoma. It was also a marketer of gas, both in Oklahoma and in other states. Cities Service, however, took possession of the raw gas purchased by it, and the raw gas produced by it in that field *at the wellhead*, then

transported such gas through its gathering lines to a gasoline plant within the state belonging to an affiliate, Cities Service Oil Company. At that plant the liquefiable hydrocarbons were extracted. The residue was then transported by Cities Service to a concentration point, in the nature of a depot, at Blackwell, Oklahoma, where such residue gas was commingled with gas from other fields. A portion of the commingled gas was then moved by Cities Service to market points within the State of Oklahoma but the greater portion thereof was transported to markets in other states.

Thus, *after* the gas was produced at the wellhead, but *before* the final movement from Blackwell to other states commenced, the raw gas was *gathered* within the State of Oklahoma; it was *processed* within the State of Oklahoma; it was *transported* within the State of Oklahoma to the concentration point at Blackwell; and at that point the gas was *commingled* in the State of Oklahoma with gas from other fields. It was the view of this Court that, as applied to the facts there involved, the case was ruled by *Parker v. Brown*, 317 U. S. 341 (1943), and *Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346 (1939).

The facts here involved are entirely different from those presented in *Cities Service*. Appellant does not purchase from Panoma natural (raw) gas at the wellhead. Appellant does not purchase wellhead gas at *any* point. Appellant does not gather the gas; it does not process the gas. All appellant does is to purchase *at wholesale* the residue constituent of such gas at the inlet to its interstate pipeline, solely for transportation immediately to and resale for ultimate public con-

sumption in other states. The sale and delivery are made after the operations of producing, gathering and processing the raw gas have been completed and therefore have nothing to do with the production or gathering of natural gas.

The purchase by appellant of residue gas from Panoma is of precisely the same character as the purchases of residue gas made by Panhandle Eastern Pipe Line Company and those made by Michigan-Wisconsin Pipe Line Company from Phillips that were discussed by this Court in the opinions in *Michigan-Wisconsin v. Calvert*, ...U. S. ....., 74 S. Ct. 396, and *Phillips Petroleum Co. v. State of Wisconsin*, ... U. S. ....., 74 S. Ct. 795.

In the *Calvert* case, this Court recognized that the taking of residue gas into an interstate pipeline from the outlet of a gasoline plant, co-incidentally with the purchase of such gas at that plant, was an incident which occurred after all activities having a local aspect (producing, gathering and processing) had been completed and was therefore such an integral part of interstate commerce that it could not realistically be separated from that commerce. In *Phillips v. State of Wisconsin* this Court held that such sales were a part of interstate commerce; that their regulation was not reserved or delegated to the states by the exception of "gathering and production" from the operation of the Natural Gas Act; and that jurisdiction over the prices at such wholesale sales was vested by that Act in the Federal Power Commission.

In the *Cities Service* case this Court held that on the

record in that case it had not been shown that "on balance" the national interest was harmed by state regulation of the sales there involved (wellhead sales). In *Phillips v. State of Wisconsin* this Court, as to sales made at the outlet of gasoline plants for immediate transportation to and resale in other states, applied the following from *Interstate Natural Gas Co. v. Federal Power Commission*, 331 U. S. 682, 692:

> "By the time the sales are consummated, nothing further in the gathering process remains to be done. We have held that these sales are in interstate commerce. *It cannot be doubted* that their regulation is *predominantly a matter of national, as contrasted to local, concern.*" (Emphasis supplied)

In such Subdivision I of the motion appellees assert in substance that the opinion of the state court discloses that there was not decided, nor was it necessary to decide, any Federal question in the consideration of the cause other than a "proper enforcement" of the order of the Commission (the basic order) in accordance with the opinion of the Supreme Court of the United States in *Cities Service v. Peerless.* But the question here is whether or not the order entered against Natural *is* a "proper enforcement" of that basic order in accordance with the opinion of this Court in the *Cities Service* case. This Court was careful in that opinion to limit its holding to sales made at the wellhead such as were reflected by the record in that case. Neither the Commission nor the state court can dispose of the substantial Federal questions raised by Natural in the proceeding below as soon as they could

be raised (as pointed out in Natural's Statement as to Jurisdiction) by failing or refusing to decide such constitutional questions or by erroneously claiming, without factual basic, that such questions do not exist. The question here is not whether the basic order was properly enforced against *Cities Service* under the facts involved in that case but whether it is *properly* enforced against Natural under the very different facts of this case.

II.

The Question of Discrimination

Subdivision III (there is no Subdivision II) of the motion includes a very brief reference to the discriminatory interpretation and enforcement by the Commission of the basic order as between Panoma as a producer of raw natural gas and Natural as a purchaser of the residue constituent of such raw gas so produced by Panoma, and Phillips as a producer of raw natural gas and Panhandle Eastern as a purchaser of the residue constituent of such raw gas produced by Phillips. Several inaccuracies and misleading statements are contained in that brief discussion. Thus:

(1) Appellees say:

> "The enforcement provisions of the basic order as applied to Phillips are not within the record of this appeal and may not be considered herein."

The statement is misleading and essentially untrue. The Phillips order *in its entirety* (No. 19,702) is Exhibit 15, shown at pages 240-246 of the manuscript record on file in this Court. The order contains no en-

forcement provision since the Commission held that Phillips was *not* violating the basic order.

(2) Appellees say:

> "Contrary to the contention of appellant, the Corporation Commission made no finding that the sales contract between Panoma and its purchasers was substantially identical with the contract between Phillips and its purchasers, nor did the Commission make a finding as to the aggregate receipts by either Panoma or Phillips from the sale of such gas."

Appellant has not contended that the Commission made a "finding" that the sales contract between Panoma and Natural was substantially the same as that between Phillips and Panhandle. What appellant says is that the transaction between Panoma and Natural as shown by the record in this case is of identical character as that between Phillips and Panhandle as revealed by the Oklahoma Commission in the Phillips order (No. 19,702) and as described in the opinion of the Supreme Court of Oklahoma in *Phillips Petroleum Co. v. State*, 220 P. 2d 279, 292. The contract between Phillips and Panhandle was before this court in *Panhandle Eastern Pipe Line Co. v. Calvert*, ... U. S. ....., 74 S. Ct. 396, and again in *Phillips v. State of Wisconsin*, ... U. S. ....., 74 S. Ct. 795, and there actually interpreted by this Court. This Court will judicially note the provisions of that contract since it has heretofore been interpreted by it. The Court also has in the record in this case the contract between Panoma and Natural. Comparison of the two contracts shows that

they are substantially identical. *Appellees do not deny that this is true.*

Nor has appellant contended that the Commission in the Panoma order (No. 24,745) expressly found the amount of aggregate receipts by either Panoma or Phillips from the sale of gas. However, the facts as to such receipts are fully proven in the record in the instant case and in fact are undisputed. In the Phillips order (No. 19,702, Ex. 15), the Commission stated the facts as to the disposition by Phillips of the constituents of its raw gas. A simple calculation from the facts there recited shows a total realization of 6.9855c per m.c.f. Panoma's Exhibit 14 prepared by Panoma's auditor shows that Panoma's total realization from all constituents aggregated 9.301c per m.c.f. The prices received by Phillips and those received by Panoma from the sale of residue gas are shown by those same exhibits.

(3) Appellees in their motion also say:

> "The order appealed from makes no reference to any sum of money so paid by Natural to Panoma. It simply requires payment of the minimum price of gas from and after the effective date of the basic order, No. 19,514."

Here again the facts are in the record and not disputed. The exhibit prepared by Panoma's auditor (14) shows the total sums of money that had been paid by Natural to Panoma. Exhibit 8, introduced by Panoma, shows the total volumes of raw gas produced, the dollars paid by Natural for residue gas, and the additional sum claimed to be due.

Appellees do not challenge the accuracy of the figures used by appellant. Their contention appears to be that they cannot be considered because they are not expressly contained in the Commission's order. Clearly, however, this Court cannot be deprived of the power to protect constitutional rights by the failure of a state regulatory body to make express findings as to *undisputed and controlling facts.*

(4) In the motion appellees say:

> "In its statement appellant attempts to compare the effect of the enforcement of the basic order as against Phillips Petroleum Company and the effect of the enforcement of the basic order as against Panoma by showing the net receipts from gas produced by Phillips and the net receipts from gas produced by Panoma."

That statement again is without basis in fact. There is nothing in the Phillips order (No. 19,702) or elsewhere in the record which shows the *net* receipts by Phillips. The only showing is that the *gross* receipts by Phillips amounted to 6.9855c per m.c.f., which this Court held to be a sufficient compliance with the basic 7c order. The facts in this record show without dispute that the *gross* receipts by Panoma amounted to 9.301c per m.c.f., and that its *net* receipts (after deducting all costs incurred in gathering and processing the raw gas and depreciation on the gathering system and processing plant) amounted to 7.04c per m.c.f. Thus, Panoma received 60 per cent gross more than did Phillips, and Panoma, in fact, received more net than Phillips received gross.

Appellees do not deny that these are the facts. They do not attempt to defend the obvious discriminatory treatment of Natural. If Phillips complied with the law in receiving 6.9855c gross from the constituents of its gas, it is obvious that Panhandle lawfully purchased the residue from Phillips at the price paid by it (4.1516c per m.c.f.). It is equally obvious that if Phillips complied with the basic order by receiving 6.9855c for the constituents of its gas, Panoma also complied with such basic order in receiving 9.301c gross (7.04c net) for the constituents of its gas and Natural's purchase of the residue at 5.12c was in compliance with the basic order.

Appellees cannot get away from the fact that the Phillips-Panhandle transaction and the Panoma-Natural transaction are, in effect, identical in character and that the basic order has been applied in the Panoma order in such a manner as effect a drastic and devastating discrimination against Natural as compared with its application to the Phillips-Panhandle transaction. This discrimination has a necessary effect not only on the parties to the transaction but on the consuming public in other states. Comparing the interpretative order against Natural, the stark results are as follows: Panhandle may purchase from Phillips at the outlet of a gasoline plant residue gas for interstate commerce at 4.1716c (its contract price), but Natural cannot purchase at the outlet of the Panoma plant residue gas for interstate commerce at 5.112c (its contract price), but must pay in excess of 7c. The astounding fact is that whereas Panhandle is permitted to continue to pay the contract price for residue gas only, Natural

is required to pay the price fixed by the Commission for the volume of raw gas as produced, although it in fact gets only the residue content, thus imposing on it the cost of gas lost by shrinkage in the gasoline plant by the extraction process and for use as fuel.

Appellees do not explain, and cannot explain, how the basic order of the Commission discussed in *Cities Service v. Peerless*, supra, can be validly applied to the Panoma-Natural contract in such manner as to effect this flagrant and shocking discrimination against Natural as compared with an application of such basic order to the purchaser (Panhandle) from Phillips under the contract reviewed by this Court in *Phillips v. Oklahoma*, supra, *Panhandle Eastern Pipe Line Co. v. Calvert*, supra, and *Phillips v. Wisconsin*, supra.

III.

The Due Process Clause

Appellees assert that the Due Process Clause of the Constitution has no application whatsoever and observe in support of that statement that "ample opportunity is afforded for a judicial review of the orders of the Oklahoma State Corporation Commission."

There is invariably an opportunity for state judicial review of a regulatory order. This review applies not only to procedural matters but also to questions of substantive rights. Natural instituted its review proceeding before the Supreme Court of Oklahoma, and, failing there (5 to 4) to obtain relief, is now before this Court to obtain protection of its constitutional rights in a substantive sense by an effective judicial

review of the Commission's order which clearly violates Natural's rights in a substantive sense under the Due Process Clause.

IV.

The Exclusive Jurisdiction of the Federal Power Commission

In Section III of the motion, appellees, after quoting extensively from *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, *Interstate Natural Gas Co. v. Federal Power Commission*, 331 U. S. 682, and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591, state:

> "Appellant contends that this line of authorities was superseded by this court's decisions in Michigan Wisconsin Pipe Line Company v. Calvert, 73 S. Ct. Rep. 396, and Phillips Petroleum Company v. State of Wisconsin, 74 S. Ct. Rep. 795."[1]

and conclude:

> "The decisions make it clearly apparent that we have two types of regulation, each covering its separate field. First, state regulation covering the production and gathering of natural gas. This is done to effect conservation and to eliminate waste; fixing minimum prices is within this power left to the states.
>
> "Second, regulation of the transportation and sale of natural gas, including its sale price to consumers throughout the United States is within

[1] Natural has never made such a contention.

the province and jurisdiction of the Federal Power Commission."[2]

Based on these asserted separate fields of regulation, appellees argue that the order here involved, fixing the price of one constituent of natural gas where sold in interstate commerce, is a regulation of production and, therefore, within the state's jurisdiction.

This contention is clearly in conflict with the doctrine of *Phillips v. Wisconsin*. In that case Phillips was held to be a natural gas company and its prices for residue gas sold for interstate transportation to be exclusively within the jurisdiction of the Federal Power Commission. In both the majority opinion and the concurring opinion in that case, it was recognized that the purpose of Congress in enacting the Natural Gas Act was to occupy the field in which it had been held the states may not act, namely, sales for resale (wholesale sales) made in interstate commerce.

This Court held that sales made by Phillips at the outlets of gasoline plants are within that field and, therefore, are under the jurisdiction of the Federal Power Commission. This is necessarily true also as to the sales of identical character made by Panoma to Natural.

Appellees do not even suggest that there is any distinction on the facts between Phillips' sales to Panhandle and Panoma's sales to Natural; none can be made. In each case the producer produces the gas,

[2]The Federal Power Commission, of course, has no jurisdiction over the sale price to "consumers." Its jurisdiction is over sales for resale (wholesale sales made in interstate commerce.)

gathers it to a gasoline plant, and processes it for the extraction of gasoline, and, after that has been done, makes the sale of the residue constituent of its gas at wholesale for immediate interstate movement.

In the preamble to the Natural Gas Act (15 U.S.C., Sec. 717), it is expressly stated that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest; that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate commerce is necessary in the public interest. It is declared that the provisions of the Act shall apply to the transportation of natural gas in interstate commerce and

> ". . . . to the sale in interstate commerce of natural gas for resale for ultimate public consumption domestic, commercial, industrial, or any other use . . . ."

Appellees cannot deny, under the facts, that the sale of residue gas by Panoma to Natural is such a sale, namely, a sale in interstate commerce. Nor can it be denied that the basic order of the Commission, as interpreted and applied by Order No. 24,745, *imposes a direct burden* on that sale.

This Court has held in the *Phillips Petroleum Co. v. State of Wisconsin*, supra, that Congress has vested sole jurisdiction to determine the reasonableness of the prices charged at such sales in the Federal Power Commission. It has "preempted the field" even if, in the absence of action by Congress, a field for state action existed.

The argument of appellees is that the basic order was one for the prevention of physical and economic waste, and has been sustained by the *Cities Service* case. In *Phillips Petroleum Co. v. Wisconsin*, supra, the Court said:

> "We are of the opinion . . . . that production and gathering, in the sense that these terms are used in §1 (b), end before the sales by Phillips occur."

Elsewhere in the opinion in that case, the Court said:

> "The Federal Power Commission did not participate in the *Cities Service* and *Phillips Petroleum* cases, the appellants there did not assert a possible conflict with federal authority under the Natural Gas Act, and consequently we expressly refused to consider at that time 'whether the Gas Act authorizes the Power Commission to set field prices on sales by independent producers, or leaves that function to the states . . . .' "

Whatever the scope of the *Cities Service* case, it is now clear that a sale of residue gas at the outlet of a gasoline plant is controlled exclusively by federal authority under the Natural Gas Act, and that state regulation for any cause is excluded from that field.

It is no answer to say, as appellees apparently argue, that the order applies to production and is applied only to producers. It *fixes the price* which *Natural must pay* at the outlet of Panoma's gasoline plant for one of the constituents (the residue) of the raw gas; and, if Natural fails to pay that price, it loses its supply of gas for interstate shipment.

CONCLUSION

Without question, the Oklahoma authorities have tremendously discriminated against Natural in their treatment of the sales of residue gas from Panoma to Natural, as compared with the treatment accorded similar sales by Phillips to Panhandle, in each case the sales in interstate commerce. Further, the sale by Panoma to Natural, being a part of interstate commerce, is not within the state's regulatory powers. Such regulation is within the exclusive jurisdiction of the Federal Power Commission which, as held by this Court in *Phillips Petroleum Co. v. State of Wisconsin*, supra, possesses full power and sole authority to regulate the price of residue gas sold at wholesale at the outlet of a gasoline plant for movement in interstate commerce.

Appellees' motion should be denied.

Respectfully submitted,

D. H. CULTON
COLEMAN HAYES
CLARENCE H. ROSS
CHARLES C. McDUGALD
WARREN T. SPIES
S. A. L. MORGAN
Counsel for Appellant, Natural Gas Pipeline Company of America

SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
JAN 31 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

JOINT BRIEF OF APPELLANT.

CLARENCE H. ROSS,
DOUGLAS F. SMITH,
D. H. CLINTON,
COLEMAN HAYES,
CHARLES C. McDUGALD,
WARREN T. SPUR,
ARTHUR R. SEDER, JR.,
Attorneys for Appellant.

11 So. La Salle St.,
Chicago 3, Illinois.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE

Foreword 1

Opinions Below 2

Jurisdiction 2

Statutes and Constitutional Provisions Involved..... 3

Questions Presented 3

Statement 4

Argument 11

I. The State Commission's Attempt to Fix the Price at Which Natural Purchases Residue Gas from Panoma Invades a Field of Exclusive Federal Control 11

A. This Court Has Already Held That the Sales Here Involved Are Within the Exclusive Jurisdiction of the Federal Power Commission 13

B. State Minimum Price Regulations Are Inconsistent With Federal Jurisdiction Over Interstate Sales of Gas for Resale..... 15

C. Oklahoma's Minimum Price Regulations Are Contrary to the Dictates of the Commerce Clause 21

1. State Regulation of the Sales Here Involved Is Inconsistent With the National Interest in the Free Flow of Natural Gas in Interstate Commerce.. 21

2. Oklahoma's Minimum Price Regulations Are Aimed at and Discriminate Against Interstate Commerce..... 25

3. The Cities Service Case Does Not Support the State Commission's Action... 29

D. The State Court's Attempts to Rewrite the Gas Purchase Contracts Cannot Be Sustained 31

II. The State Commission's Order in No. 191 Violates the Principles of the Equal Protection Clause of the Fourteenth Amendment..... 35

Conclusion 39

Appendix A 41

CITATIONS.

Cases.

Best & Co. v. Maxwell, 311 U. S. 454..... 28

Broad River Power Co. v. South Carolina, 281 U. S. 537 35

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179.....5, 29, 30, 31

Dean Milk Co. v. City of Madison, 340 U. S. 349..... 28

East Coast Lumber Terminal v. Town of Babylon, 174 F. 2d 106..... 38

Foster-Fountain Packing Co. v. Haydel, 278 U. S. 1.. 28

Illinois Natural Gas Co. v. Central Illinois Co., 314 U. S. 498..... 25

Interstate Natural Gas Co. v. Federal Power Commission, 331 U. S. 682.....14, 22

Joseph v. Carter & Weekes Stevedoring Co., 330 U. S. 422 27

Lemke v. Farmers Grain Co., 258 U. S. 50..... 22

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157 .....11, 12, 21, 31

Missouri v. Kansas Natural Gas Co., 265 U. S. 298... 16
Napier v. Atlantic Coast Line R. Co., 272 U. S. 605..16, 19
New York Transit Co. v. New York, 303 U. S. 573.... 35
Northern Pacific Ry. Co. v. Washington, 222 U. S. 370. 19
Parker v. Brown, 317 U. S. 341..... 30
Phillips v. Henderson Co., 101 Okla. 227, 225 Pac. 668. 34
Phillips Petroleum Co. v. Oklahoma, 340 U. S. 190.... 31
Phillips Petroleum Company v. Wisconsin, 347 U. S. 672 .....4, 9, 11, 12, 13, 15, 20, 33, 34
Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U. S. 83..... 16
Public Utilities Commission v. United Fuel Gas Co., 317 U. S. 456.....16, 17
Railway Express Agency, Inc. v. New York, 336 U. S. 106 37
Rogers v. Alabama, 192 U. S. 231..... 38
Shafer v. Farmers Grain Co., 268 U. S. 189..... 22
Smith v. Cahoon, 283 U. S. 553..... 37
South Carolina Highway Dept. v. Barnwell Bros., 303 U. S. 177.....27, 28
Southern Wisconsin Ry. Co. v. Madison, 240 U. S. 457. 35
State Corporation Commission of Kansas v. Federal Power Commission, 206 F. 2d 690..... 19
Sunday Lake Iron Co. v. Wakefield, 247 U. S. 350.... 38
Superior Oil Company v. Mississippi, 280 U. S. 390... 22
Torrance v. Florida, 188 U. S. 519..... 38
United States v. Public Utilities Commission, 345 U. S. 295 18
Wisconsin v. Federal Power Commission, 205 F. 2d 706 .....31, 33
Yick Wo v. Hopkins, 118 U. S. 356.....37, 38

United States Constitution and Statutes.

Constitution, Art. I, Sec. 8, Cl. 3.....
.....3, 9, 10, 21, 22, 24, 25, 27, 28, 30, 31, 39
Constitution, Amendment XIV, Sec. 1...3, 10, 35, 37, 38, 39
Natural Gas Act, 52 Stat. 821.....
.....3, 4, 9, 12, 14, 16, 17, 20, 29, 31, 39

Textbooks.

Story, The Constitution §§259, 260.....24, 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 191.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,
Appellees.

No. 321.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

JOINT BRIEF OF APPELLANT.

Foreword.

The two cases covered by this brief present, in large part, identical legal questions arising out of successive orders of the Corporation Commission of Oklahoma (hereafter referred to as "state commission") involving minimum prices for the sale of gas by Panoma Corporation to appellant Natural Gas Pipeline Company of America (hereafter referred to as "Natural"). Both orders were

affirmed by the Supreme Court of Oklahoma, the later decision (in No. 321) specifically relying upon the former. The state commission is an appellee in both cases.

After this Court on appeal had noted probable jurisdiction, both cases were assigned for argument, one immediately following the other. In order to avoid duplication of statement and argument, appellant files this brief covering both appeals.

OPINIONS BELOW.

The opinions of the Supreme Court of Oklahoma have not been officially reported. Its opinion in No. 191 is unofficially reported at 271 P. 2d 354 and in No. 321 at 272 P. 2d 425. These opinions appear, respectively at 191R. 149 and 321R. 165.[1] In each case four of the nine members of the state court dissented with written opinion.

JURISDICTION.

The final judgment of the Supreme Court of Oklahoma in No. 191 was entered on March 23, 1954. (191R. 173) On June 15, 1954, the Chief Justice of that court signed an order allowing the appeal to this Court. (191R. 174) The appeal was docketed on July 6, 1954.

The final judgment of the Supreme Court of Oklahoma in No. 321 was entered on July 13, 1954 (321R. 198) and notice of appeal to this Court was filed with the Clerk of the Supreme Court of Oklahoma on August 7, 1954. (321R. 199) The appeal was docketed in this Court on September 1, 1954.

By orders entered November 8, 1954, this Court noted probable jurisdiction. (191R. 183; 321R. 285) The juris-

[1] The record in No. 191 will be referred to as (191R.....) and the record in No. 321 as (321R. ....). Emphasis is supplied throughout this brief unless otherwise noted.

diction of this Court to review these judgments on appeal is conferred by Title 28, United States Code, Section 1257(2).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

These cases both involve the Commerce Clause of the Federal Constitution, Art. I, Sec. 8, Cl. 3, and the Natural Gas Act, 15 U. S. C. § 717 *et seq.* The appeal in No. 191 also involves the Equal Protection Clause of the Fourteenth Amendment. Pertinent provisions of the Constitution and statute are set out in Appendix A hereto. The state statute involved in No. 191, as that term is used in Title 28 U. S. C. Section 1257(2), is the order of the state commission numbered 24,745. (191R. 81) The state statute involved in No. 321 is the order of the state commission numbered 26,096. (321R. 132)

QUESTIONS PRESENTED.

1. Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of the Constitution of the United States (Art. I, Sec. 8, Cl. 3) and the Natural Gas Act (15 U. S. C. 717 *et seq.*) to fix the minimum price of residue gas sold at the outlet of Panoma Corporation's gasoline plant to Natural, an interstate pipeline company, for immediate transportation interstate.

2. In cause No. 191, whether the Corporation Commission of Oklahoma has the power, consistently with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States (Amendment XIV, Sec. 1), to apply its minimum price order in such a way as to require appellant to pay Panoma Corporation substantially higher amounts for residue gas than other inter-

state pipeline companies were required to pay their suppliers at the same time under identical circumstances.

STATEMENT.

No. 191.

Appellant Natural Gas Pipeline Company of America is a natural gas company as defined in the Natural Gas Act, 15 U. S. C. § 717 *et seq.*, and operates an interstate gas pipeline transportation system under certificates of convenience and necessity issued by the Federal Power Commission. Natural's pipeline system extends from a point near Gray, Oklahoma to the vicinity of Joliet, Illinois, with a trunk lateral line traversing northern Illinois. By means of this system it transports and delivers natural gas for consumption in the Chicago metropolitan area and other localities. (191R. 98)

On December 1, 1946, Natural entered into a contract with the partnership of Harrington & Marsh, owners of mineral rights covering in excess of 78,000 acres of land in Texas County, Oklahoma, for the purchase of specified amounts of natural gas from wells to be drilled by the partnership on this land. (191R. 98-125) The contract provided that Harrington & Marsh were to produce the gas, construct and operate gathering lines from the wells to a central point, and there construct and operate a gasoline plant to extract the liquids from the raw natural gas. (191R. 100)[2]

[2] For mutual operating convenience, Natural agreed to construct and operate a compressor station at the inlet side of Harrington & Marsh's gasoline plant. Natural received temporary custody of the gas at that point but, immediately upon compression of the gas, it was redelivered to sellers for extraction of liquids. (191R. 101, 103) This was the same operating practice as that involved in the sale by Phillips Petroleum Company to Panhandle Eastern Pipe Line Company involved in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672. (321R. 218-9, 284)

The contract further provided that, following the extraction by Harrington & Marsh of the liquefiable hydrocarbons, the residue constituent of the natural gas would be delivered to Natural near the outlet of the gasoline plant, at which point title to that part of the gas would pass to Natural. (191R. 103) The price to be paid by Natural to Harrington & Marsh for the residue gas was fixed in the contract at 6 cents per Mcf until 1951, with increased amounts provided thereafter. (191R. 106)[3]

Pursuant to this contract Panoma Corporation, which succeeded to the properties of Harrington & Marsh (191R. 24), began deliveries of residue gas to Natural in August of 1948. (191R. 25) As contemplated by the contract, Panoma thereafter produced, gathered and processed the natural gas for the extraction of the liquid hydrocarbons, after which it sold the residue to Natural near the outlet of its gasoline plant at the prices set forth in the contract.

Meanwhile, effective January 1, 1947, the state commission by its order No. 19514 fixed a minimum wellhead price for gas produced in the Guymon-Hugoton field of Oklahoma, the gas field here involved. That order directed:

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, *at at price, at the wellhead,* of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch." (191R. 134)

The validity of this order as applied to sales of raw natural gas at the wellhead, prior to gathering and processing, was upheld by the Supreme Court of Oklahoma and by this Court on appeal in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179.

[3] The contract price was computed on a pressure base of 16.4 pounds per square inch. Subsequently the state commission set 14.65 pounds per square inch as a standard pressure for measurement, and on this basis the initial contract price was 5.12 cents per Mcf, and not 6 cents. (191R. 25)

Thereafter, until January of 1951, Panoma continued to submit its invoices, and Natural continued to pay for the residue gas purchased from Panoma, on the basis of the contract prices. During that month, however, Panoma "revised the method of preparation of invoices" to assert an obligation on Natural to pay for residue gas the increased price fixed by the 7 cent minimum price order of the state commission applicable to sales of raw natural gas at the wellhead. (191R. 44) And on January 30 it filed an application with the state commission to require Natural to pay such increased prices. (191R. 11-12)

After a hearing, the state commission sustained Panoma's claims. (191R. 81-87) It found that Panoma's sales to Natural were comprehended by its original wellhead order and that Panoma was not realizing the equivalent of 7 cents per Mcf from its sales, even though the price paid by Natural for residue gas (5.12 cents) plus Panoma's receipts from the sale of liquid hydrocarbons extracted from the gas (4.18 cents) resulted in a gross return of 9.30 cents per Mcf.[4] Natural was then ordered to increase its payments to 7 cents per Mcf, the equivalent of the minimum wellhead price for raw natural gas, without consideration of Panoma's receipts from liquid hydrocarbons extracted therefrom. In addition, Natural was ordered to pay Panoma the difference between the contract price and the increased price thus fixed by the state commission retroactively to the date deliveries had begun. (191R. 86) Unless that payment was made within 20 days—a sum of more than $1,300,000—Panoma was directed to cease deliveries to Natural.

[4] The state commission had previously found that Phillips Petroleum Company was complying with the basic order by realizing approximately 7 cents per Mcf from the sale of residue and liquid constituents combined. The discrimination resulting from this difference in treatment will be discussed *infra* at pp. 35 to 38.

Upon appeal, the Supreme Court of Oklahoma sustained the state commission's order, four justices dissenting. (191R. 151-169) Following denial of Natural's petition for rehearing, its appeal to this Court was perfected.

No. 321.

Insofar as the physical details of production, gathering, processing and delivery of gas and the pertinent gas purchase contract are concerned, the facts involved in No. 321 are identical with those in No. 191. See Stipulation (321R. 126-128) and gas purchase contract. (321R. 247)

The state commission order involved in No. 321 grew out of an application filed by a group of royalty owners with the state commission on January 3, 1952, in which they sought an order of the commission increasing the minimum wellhead price in the Guymon-Hugoton field from 7 cents to 9.8262 cents per Mcf. (321R. 9-10) They also asked that the state commission's order be so couched as to

> "* * * clearly establish the right and duty of each producer to receive, and the obligation of each purchaser to pay, the established wellhead price for gas without deductions for the use or earnings of facilities and plants for handling or working such gas after it leaves the wellhead; * * *" (321R. 10)

In short, the state commission was asked both to increase the minimum wellhead price and to apply generally the result reached by its order in No. 191, that pipeline companies which purchase residue gas away from the wellhead must pay the equivalent of the wellhead price for the residue constituent alone, without consideration of the value of the gasoline and other liquids retained by the producer-processor.

In addition to Natural, Michigan-Wisconsin Pipe Line

Company, appellant in No. 320 in this Court and Panhandle Eastern Pipe Line Company, appellant in No. 322, were parties to the proceeding before the state commission, as was Phillips Petroleum Company, a principal supplier of gas to Michigan-Wisconsin and Panhandle. Following a hearing, the state commission, on July 29, 1952, entered its order No. 26,096 (321R. 132-137) in which it (a) increased the minimum price for natural gas sold at the wellhead from 7 cents per Mcf, as provided in its order of January 1, 1947, to 9.8262 cents per Mcf, the exact price requested by the royalty owners in their application; (b) fixed a minimum price of 9.8262 cents per Mcf plus the reasonable cost of gathering for gas sold, without processing, at points remote from the well; and (c) fixed a minimum price of 9.8262 cents per Mcf for residue gas sold after gathering and processing for the extraction of gasoline and other liquefiable hydrocarbons.

Natural purchases only residue gas in Oklahoma. It was therefore affected by the third provision noted above, which read:

> "If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet." (321R. 137)

Upon appeal, the Supreme Court of Oklahoma affirmed the state commission's order, four justices again dissenting. (321R. 165-188)[5] Following the state court's denial of petitions for rehearing filed by Natural, Michigan-Wisconsin and Panhandle (321R. 198), their appeals to this Court were perfected.

---

[5] One of the five justices of the majority concurred only by reason of *stare decisis* (321R. 178), although he had dissented from the court's prior decision in No. 191. (191R. 164) Thus, a majority of the state court actually disapproved the result reached in No. 321.

SUMMARY OF ARGUMENT.

1. The orders of the state commission here involved, which attempt to set a minimum price at which residue gas may be sold by an independent producer to an interstate pipeline company after completion of gathering and processing, are an unconstitutional invasion by the State of an area of exclusive federal jurisdiction. This is demonstrated by the following considerations:

(a) This Court, in *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, held that independent producers like Panoma are "natural gas companies" within the meaning of the Natural Gas Act, 15 U. S. C. § 717 *et seq.*, and that sales of the very kind here involved are subject to the jurisdiction of the Federal Power Commission. As appellees themselves argued before this Court in the *Phillips* case, attempted regulation of the same sales by state and federal agencies results in a basic conflict of authority. In any such case, attempted regulation by the state must fail.

(b) In view of the great national interest in the free flow of natural gas to markets throughout the country, attempted state regulation of sales at the very mouth of an interstate pipeline contravenes the Commerce Clause of the Constitution of the United States. No further processing remains to be done; no further gathering or assembling lies ahead. State-fixed minimum prices exacted at this stage of the interstate movement are passed on directly to the consumers of gas in other states. This Court has uniformly held that, under circumstances of this kind, attempted state regulation of sales made in interstate commerce cannot stand. This is particularly true where, as here, state regulation may readily be made the vehicle for

local preferences to the detriment of citizens of other states.

2. The state commission's orders fixing a minimum price for the sale of natural gas are specifically aimed at, and discriminate against interstate commerce, and for that additional reason contravene the Commerce Clause. The only gas field for which the state commission has fixed minimum prices is the Guymon-Hugoton field, from which 89% of the gas is transported to other states and only 11% consumed within Oklahoma. On the other hand, in the remaining gas fields of Oklahoma, from which over 85% of the gas is consumed within Oklahoma and less than 15% transported to other states, the state commission has not prescribed minimum prices even though that gas is in many cases sold at prices far lower than those prevailing in the Guymon-Hugoton field. The state commission's action thus represents a studied attempt to increase the price of gas sold interstate while permitting the maintenance of contract prices with respect to gas consumed in Oklahoma. This obvious discrimination against interstate commerce voids the state commission's orders under the Commerce Clause.

3. The state commission interpreted its original 7 cent minimum wellhead price order as having been complied with by Phillips Petroleum Company by reason of the fact that that company received a gross price of approximately 7 cents per Mcf from the sale of the residue and liquid components of the gas combined. In the case of Panoma, on the other hand, the state commission in interpreting the same order held that receipts from the residue constituent of the gas alone must equal 7 cents per Mcf., without consideration of the proven substantial value of the liquid constituents, and directed Natural to increase its payments for residue gas to 7 cents. This acknowledged discrimination among companies purchasing gas at the same time and

under identical conditions results in a denial of that equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT.

I.

THE STATE COMMISSION'S ATTEMPT TO FIX THE PRICE AT WHICH NATURAL PURCHASES RESIDUE GAS FROM PANOMA INVADES A FIELD OF EXCLUSIVE FEDERAL CONTROL.

The transaction over which the Corporation Commission of Oklahoma has attempted to assert control by the orders here involved is of a type very familiar to this Court, namely, the sale of residue gas by an independent producer of natural gas to an interstate pipeline company. Panoma Corporation,[6] like Phillips Petroleum Company, produces natural gas from numerous wells located on land which it owns or controls, gathers the gas to a central point through an intricate network of gathering lines, processes the gas in a gasoline plant, where gasoline and other liquid hydrocarbons are extracted, and finally, after such processing has been completed, sells and delivers the residue constituent to the interstate pipeline. From the point of sale to the pipeline company, the gas travels immediately and without interruption to its markets in other states.

Thus, the physical and contractual situation with which this Court was concerned last term in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157 and *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, is again presented. Indeed, the order of the state commission involved in No. 321 applies equally to the very transactions between Phil-

[6] After the record was closed in the two cases before the Court, Panoma Corporation's properties were sold to Dorchester Corporation, which now operates the properties.

lips and Michigan-Wisconsin and Panhandle, that were before the Court in those cases.

In view of the factual identity of the present cases with those just cited, it may not be denied that Panoma's sales to Natural were sales in interstate commerce and that the State of Oklahoma could not constitutionally tax those sales or the coincident "taking" of gas by Natural for immediate interstate transportation. *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157, 167. Nor may it be denied that Panoma was a "natural gas company" within the meaning of the Natural Gas Act, 15 U. S. C. § 717 *et seq.*, and that its sales to Natural, another "natural gas company," were subject to regulation by the Federal Power Commission. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672.

Pursuant to the decision last cited, the Federal Power Commission has adopted extensive regulations applicable to independent producers, relating to the filing of applications for certificates of convenience and necessity, the filing of gas sale contracts and many other details.[7] And during January of this year, the Commission held comprehensive hearings relating to the principles by which rates should be fixed for sales of gas by independent producers to interstate pipeline companies.[8] Indeed, Panoma's successor, Dorchester Corporation, has already applied to the Federal Power Commission for authority to increase its rates to Natural to 10 cents per Mcf., an amount substantially in excess of the contract price.[9]

[7] See 19 Fed. Reg. 8807.

[8] Federal Power Commission Docket No. R-142, "Consideration of Principles and Methods to be Applied in the Fixing of Rates to be Charged by Independent Producers for Natural Gas Sold in Interstate Commerce for Resale."

[9] See order of the Federal Power Commission in Docket No. G-6505, *In the Matter of Dorchester Corporation*, issued December 29, 1954, 20 Fed. Reg. 143.

The question necessarily presented by these appeals, therefore, is whether a state agency may constitutionally fix the minimum price at which one natural gas company may sell gas in interstate commerce to another natural gas company when the prices to be paid on such sales are also subject to the jurisdiction of the Federal Power Commission. But the very statement of the contention that both state and federal regulatory bodies have power to fix the price of a single sale reveals an inherent contradiction. As the Corporation Commission of Oklahoma itself pointed out in its brief to the Federal Power Commission in the *Phillips* case:

> "To repeat, two agencies cannot exercise jurisdiction and authority over the same producers and gatherers with respect to the same sales of gas without there being a basic conflict of jurisdiction and authority." (Brief of Corporation Commission of Oklahoma before the Federal Power Commission in Docket No. G-1148, filed June 25, 1951, p. 19.)

While no extended argument of the point seems necessary in view of the position thus taken by the appellee state commission, appellant believes it appropriate to point out the following additional considerations:

A. This Court Has Already Held That the Sales Here Involved Are Within the Exclusive Jurisdiction of the Federal Power Commission.

The question whether a state agency has power to fix minimum prices for the interstate sale of gas by an independent producer to a pipeline company was specifically decided in the *Phillips* case. The Court will recall that, in addition to the briefs and arguments submitted by Phillips and the Federal Power Commission, a 45 page brief was submitted by the Corporation Commission of Oklahoma and the regulatory commissions of Texas and New Mexico.

In those briefs it was argued, on the basis of certain language in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, that the Natural Gas Act should not be construed as applying to sales of the kind here involved because Federal Power Commission jurisdiction of such sales would conflict with and render nugatory some of the regulatory measures of the producing states including, specifically, Oklahoma's minimum price regulations. Thus, at page 18 of their brief in this Court those states said:

> "The conflict with state authority in those instances where such minimum prices are fixed is obvious."

Answering this argument and that of Phillips to the same effect, this Court said:

> "The *Interstate* case is also said to be distinguishable in that it did not involve an asserted conflict with state regulation, and federal control was not opposed by the state authorities, while in the instant cases there are said to be conflicting state regulations, and federal jurisdiction is vigorously opposed by the producing states. The short answer to this contention is that the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control. We expressly rejected any implication to the contrary, in the *Interstate* case." 347 U. S. at 681.

In order to give any effect to the state commission's order, appellees must now argue that, with respect to interstate sales of gas in Oklahoma, the Federal Power Commission is either ousted of jurisdiction entirely or is bound to give effect to the state minimum price in setting the rates of independent producers, whereas its powers are subject to no such limitation in respect of sales in states having no such regulations. But any such argument would be quite contrary to this Court's specific holding that Federal Power Commission jurisdiction "was not intended to

vary from state to state, depending upon the degree of state regulation."

The very reason why Oklahoma participated so actively in the *Phillips* case was that, as it acknowledged, Oklahoma's minimum price regulations were entirely inconsistent with federal jurisdiction over the sales in question. The state commission is hardly in a position now to contend that this Court's decision was made without consideration of its effect upon conflicting state regulations. In short, the precise question now before this Court was actually presented to and necessarily decided by the Court in the *Phillips* case. This, obviously, is also appellees' view, for the principal point in the petition for rehearing submitted this term by the State of Oklahoma in the *Phillips* case was entitled:

> "Contrary to the expressed intent of Congress, the Court's decision pre-empts for federal regulation an entire field heretofore exclusively occupied by the States." (Petition for Rehearing of the States of Texas, Oklahoma and New Mexico in No. 281, 1953 Term, *Texas et al.* v. *Wisconsin et al.*, p. 6.)[10]

B. State Minimum Price Regulations Are Inconsistent With Federal Jurisdiction Over Interstate Sales of Gas for Resale.

While appellees have thus conceded that, under this Court's decision in the *Phillips* case, federal regulation

---

[10] Appellee Phillips Petroleum Company similarly construes this Court's opinion. In its petition for rehearing in the *Phillips* case, Phillips stated (pp. 16-17):

> "The decision gives the Federal Power Commission wide authority in an area which for decades has been occupied solely by state power. It does so in terms which suggest that within this area federal power is to be paramount and exclusive: * * *
>
> * * * * * *
>
> "Federal regulation of field prices of natural gas will necessarily conflict with state regulation of the same prices. * * *"

of the rates at which independent producers sell gas to interstate pipeline companies is "paramount and exclusive", this fact is, in any event, clearly demonstrable.

As this Court has often pointed out, it was the intention of Congress in enacting the Natural Gas Act to fill the "gap" caused by this Court's decisions that, with respect to wholesale sales of gas in interstate commerce, the Commerce Clause precludes state regulation. *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298; *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83. The congressional committee reports accompanying the bill reveal that:

> "* * * The basic purpose of the present litigation is to *occupy this field* in which the Supreme Court has held that the States may not act." (H. R. Rep. No. 709, 75th Cong. 1st Sess.)

Since "occupation of the field" is a term of art signifying exclusive federal control of the subject matter, see *e. g. Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 613, the intent of Congress is unmistakable.

Shortly after enactment of the Natural Gas Act, moreover, the question was presented whether a state regulatory commission could regulate the rates at which a natural gas company sells gas to a distribution company for resale. In *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456, 468, this Court held that "The power to fix rates for natural gas transported and sold in interstate commerce has been intrusted solely to the Federal Power Commission." Pointing out the essential conflict between state and federal regulation of the same rates, the Court stated:

> "And as to rates effective in the future we agree with the District Court that the Natural Gas Act of 1938 governs. Congress by that Act * * * preempted the regulatory powers over the transportation and sale

of natural gas in interstate commerce." 317 U. S. at 466.[11]

The conflict which this Court found inherent in concurrent state and federal regulation of the same rates at the terminus of an interstate pipeline is repeated—even intensified—by attempted state regulation of sales by one natural gas company to another at the mouth of such a pipeline. Section 4(a) of the Natural Gas Act requires that rates and charges for the sale of natural gas by a natural gas company "shall be just and reasonable." Rates and charges must be filed with the Federal Power Commission, § 4(c), and may not be changed without notice to the Commission and the public. § 4(d). The Commission may inquire into the legality of rates and charges of companies subject to its jurisdiction, and if it finds after a hearing that the rates or charges are unreasonable, "the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order." § 5(a). Furthermore, no natural gas company may abandon any part of its service without first having obtained the approval of the Commission upon a finding that the present or future public convenience and necessity permit such abandonment. § 7(b).

The scope and character of these provisions indicates the untenability of attempted state regulation of the same transaction. Suppose that the Federal Power Commission should find that the present Oklahoma minimum price of

[11] This Court also said in the *United States Fuel Co.* case: "It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, *to the extent defined in the Act*, and local matters would be left to the state regulatory bodies." 317 U. S. at 467.

9.8262 cents per Mcf. is not "just and reasonable" and orders Dorchester to charge no more than the contract price. Dorchester will then be subject to a state commission order that it shall not produce gas for sale to Natural at less than 9.8262 cents and, at the same time, subject to the order of the Federal Power Commission that it shall charge no more than 5.12 cents and that it may not abandon deliveries.

As appellee Phillips Petroleum Company well stated in its brief to the Federal Power Commission: "Surely it will not be contended that each authority would have to confer with the other and agree upon prices which would not interfere one with the other! Such an idea is in direct conflict with all that has been said by the Supreme Court concerning the respective powers of the Federal Power Commission and the states"[12]

The question whether there is any present conflict between rates fixed by the Federal Power Commission and the Oklahoma minimum price of 9.8262 cents per Mcf. is irrelevant. The scope of jurisdiction of the Federal Power Commission surely does not depend upon the measure of the rate which it fixes. Thus, it is no answer to say that if the state sets an 8 cent minimum price and the Federal Power Commission sets a 9 cent rate there is no conflict of jurisdiction. If, as a result of the actions of either agency, their orders *may* come into conflict, state regulation must necessarily fail.

This Court recently had occasion to apply this principle. In *United States* v. *Public Utilities Commission*, 345 U. S. 295, where, as here, a state regulatory agency and the Federal Power Commission both asserted jurisdiction over the same sale, it was argued that because the state agency's

[12] Brief of Phillips Petroleum Company before the Federal Power Commission in Docket No. G-1148, filed June 22, 1951, p. 104.

order merely permitted, but did not require, higher rates this Court should await actual conflict before passing upon the question of the jurisdiction of the respective agencies. But this Court said:

> "The distinction, whatever its abstract attraction, misses the point that we are here considering whether or not the state agency had jurisdiction at the outset to consider these rates at all. That the order would have no concrete effect on the prices petitioners must pay is irrelevant and unlikely as well." 345 U. S. at 298-9 (footnote 1).

See also, *e. g., Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370, 378; *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 613. Here, it should be added, that conclusion follows *a fortiori*, since the state orders are not merely permissive but affirmatively require payment of the increased price.

It may be pointed out, moreover, that actual conflict between state minimum price orders and Federal Power Commission jurisdiction has already arisen and been resolved contrary to the assertion of power by the state. *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690 (8th Cir.), involved an appeal from a decision of the Federal Power Commission fixing the rates of Northern Natural Gas Company. That company, in addition to operating an interstate pipeline, produces some of its own gas. As to such gas the company sought in its rate application to attribute the value of 8 cents per Mcf., the minimum price set by the Kansas state commission. But in determining Northern Natural's cost of service the Federal Power Commission refused to recognize the state minimum price which, it said, would "add a fictitious $1,914,574 to Northern's actual cost of service." 206 F. 2d at 703.

The Court of Appeals upheld the Commission's refusal

to allow the state minimum price. With respect to this question the court said:

> "We think the argument here that the Commission is bound to give effect to the 8 cent valuation made in Kansas * * * is simply another attempt to prevent the Federal Commission's exercise of its power to regulate within the confines of its jurisdiction according to its own judgment by reference to costs and charges, and without reliance upon opinions as to values." 206 F. 2d at 704.

The Kansas Commission's petition for certiorari was denied by this Court on January 4, 1954. 346 U. S. 922. Its petition for rehearing was denied on June 7, 1954, the very day of this Court's decision in the *Phillips* case. 347 U. S. 1022. The question whether a state minimum price regulation has any proper place in the determination of rates subject to the jurisdiction of the Federal Power Commission was thus before the Court when it decided the *Phillips* case. While denial of certiorari of course implies no decision regarding the merits of the case, it is a fair inference that this Court considered the *Northern Natural* case in connection with the *Phillips* case and did not regard their respective dispositions as inconsistent.

In sum, Congress granted to one agency, the Federal Power Commission, full authority to regulate gas sales by independent producers to interstate pipeline companies. The Natural Gas Act establishes a comprehensive regulatory system. The Commission, not some state agency, is to determine what rates are "just and reasonable." The Commission, not the Corporation Commission of Oklahoma, is to determine when and whether Panoma or its successor may cease its present service to Natural. It is unnecessary to examine at large the permissible scope of state gas and oil conservation measures. It is enough for present purposes that the specific measures here involved

—the orders of the state commission fixing minimum prices for sales over which the Federal Power Commission has jurisdiction—were beyond the state's power.

C. Oklahoma's Minimum Price Regulations Are Contrary to the Dictates of the Commerce Clause.

1. State Regulation of the Sales Here Involved Is Inconsistent With the National Interest in the Free Flow of Natural Gas in Interstate Commerce.

Discussion thus far has focused on the evident conflict between attempted state regulation of interstate sales of natural gas for resale and the jurisdiction of the Federal Power Commission to regulate the same sales. In addition to the fact that two independent agencies cannot each fix the price of the same sale, however, is the further fact that the state commission has here attempted to regulate a transaction in interstate commerce in which the national interest is paramount. For that reason also the state commission's orders must fail.

When the residue gas here involved is purchased by Natural at the mouth of its interstate pipeline the raw natural gas of which it was originally a constituent has been produced, gathered and processed through a gasoline plant. The liquefiable constituents have been separated and sold, and the residue has been made to conform to the standards of purity and quality required for the interstate transportation of such gas and for its utilization by the ultimate consumer. Natural makes no sales in Oklahoma; the residue gas is purchased only for transportation to markets in other states. It can go nowhere else, physically or contractually. The delivery of that gas, coincident with its sale, into Natural's pipeline is a movement in interstate commerce, and "is essentially a part of interstate commerce itself." *Michigan-Wisconsin Pipe Line Co.* v.

Calvert, 347 U. S. 157, 167. For the same reason the sale itself is an integral part of interstate commerce.

Any regulation of sales of a commodity made under such circumstances vitally affects the interests of those who live in the consuming states and provide an outlet for the commodity, thereby giving it a value, as well as the interest of those who produce the commodity. If it is in the public interest that prices in such transactions be regulated by the states of production, affirmative authority therefor must be obtained from Congress, which can consider the matter with impartial regard for the interest of *all* the states—the consuming states as well as the producing states. *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 59, 61; *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189, 202.[13]

In *Superior Oil Company* v. *Mississippi*, 280 U. S. 390, 396, this Court, through Mr. Justice Holmes, emphasized the significance of "dramatic circumstances" such as a great universal stream of a commodity from the state of production to markets in other states in determining whether state action is violative of the Commerce Clause. The flow of natural gas from the producing states to markets throughout the nation has long been recognized as involving just such dramatic circumstances. This has, of course, resulted in a great national interest in the interstate sales of the gas involved in that movement as was pointed out in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, 692-3, as follows:

> "* * * We have held that these sales are in interstate commerce. *It cannot be doubted that their regulation is predominantly a matter of national, as contrasted to local concern.* All gas sold in these transactions

[13] Congress has authorized state regulation of interstate activities when it has considered such regulation to be in the public interest. For illustrations for such authorizations see *United States* v. *Public Utilities Commission*, 345 U. S. 295, 304 (footnote 9).

> is destined for consumption in States other than Louisiana. Unreasonable charges exacted at this stage of the interstate movement become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of the gas, including the ultimate consumer. It was to avoid such situations that the Natural Gas Act was passed."

The national interest in the sales here involved is thus clear. So far as the state's interest in regulating such sales is concerned, however, the Court will readily discover that Oklahoma's interest in "economic conservation," which is the chief theoretical basis for the setting of minimum prices, is simply a polite euphemism for the theory that consumers of gas in other states should be required to pay local producers prices in excess of those arrived at at arm's length because some so-called "competitive fuels" sell at higher wholesale prices than natural gas in the consuming markets of the nation.[14] The purpose of fixing minima for sales of gas, in other words, is to assure producers of gas in the Guyman-Hugoton field of Oklahoma that they will receive the maximum for their gas consistent with maintaining the competitive position of natural gas *vis-a-vis* other fuels—in short, whatever the traffic will bear.

This position was very frankly stated by one of the principal witnesses introduced by proponents of the state commission's orders:

"Q. If we first assume that the State of Oklahoma

[14] The principal justification for the increase in the minimum price of gas from 7 cents to 9.8262 cents per Mcf was that the comparative wholesale prices of coal, crude oil, kerosene, gasoline and butane, on the basis of B.T.U. content, were greater in Chicago and other consuming markets than the price of natural gas, and that consumers of gas were not therefore paying as much for the gas as it was worth in comparison with other fuels. (321R. 26) On the basis of this comparison, the witness testified that the price of gas ought to be 25 or 30 cents per Mcf. (321R. 49-50)

has an interest in preserving natural resources or seeing that they are—the state and its citizens realize its value therefor, if it can be prevented, what action do you think the state ought to take to prevent sales of gas from that field for less than 9.8262 cents?

"A. I think to protect the interests of the State of Oklahoma and its citizens that the Commission ought to use such powers as it has to provide a price for gas produced in Oklahoma *that will produce the maximum revenues consistent with the policy of maintaining markets.*" (321R. 57)

* * * * *

"Q. Mr. Biddison, in what manner would the owners, producers of that gas, be adversely affected if any, by an increase in the wellhead price of that field? Do you visualize any manner in which detriment will occur to the State of Oklahoma or to the citizens of Oklahoma by the increase in this lower price?

"A. I can see only advantages to it.

"Q. Then the Commission having authority to set a price, do you know of any reason why they should not do so?

"A. I do not." (321R. 58-59)

It was upon considerations of this kind that the Corporation Commission of Oklahoma proceeded to burden the out-of-state consumers of gas served by Natural's pipeline alone with additional costs of $1,108,505 annually, an increase of 57% over the contract price. Of course this windfall is advantageous to Panoma and other gas producers and royalty owners in Oklahoma. But it was the purpose of the Commerce Clause to prevent just such local preferments at the expense of the free and unfettered flow of interstate commerce. According to Mr. Justice Story, prior to adoption of the Constitution

"* * * each State would legislate according to its own interest, the importance of its own products, and the local advantages or disadvantages of its position in a

political or commercial view." Story, *The Constitution*, Sec. 259.

This came "to threaten at once the peace and safety of the union." *Id.*, Sec. 260.

The Commerce Clause put an end to such narrow parochialism. That it should be revived in an industry as important and far-flung as that of supplying natural gas to homes and industries throughout the nation presents a threat to national unity that should not be minimized.

Finally, in weighing the respective national and local interests in the regulation of sales of natural gas in interstate commerce, the very fact of enactment of the Natural Gas Act, quite apart from the conflict between state and federal regulation resulting therefrom, is conclusive evidence of the paramount national interest. *Illinois Natural Gas Co.* v. *Central Illinois Co.*, 314 U. S. 498, 506.

Since by the orders here involved the state commission has invaded a field which, under the Commerce Clause, is reserved exclusively to federal control, the orders are invalid.

2. Oklahoma's Minimum Price Regulations Are Aimed at and Discriminate Against Interstate Commerce.

Most important and significant is the fact that, in addition to casting a heavy burden on interstate commerce, Oklahoma's minimum price regulations are specifically aimed at, and discriminate against, interstate commerce.

Oklahoma's minimum price regulations apply only in the so-called Guymon-Hugoton field, located in the western panhandle region of the State. (321R. 129) Of the gas produced in that field, 89% is transported interstate, while approximately 11% is consumed or stored in Oklahoma. Other fields in Oklahoma produce nearly twice as much

gas as that produced in the Guymon-Hugoton field. Of the gas produced in those fields, however, more than 85% is consumed or stored within Oklahoma and less than 15% transported to other states—almost precisely the inverse ratio of that prevailing in the Guymon-Hugoton field. (321R. 283)

One would suppose that, if minimum prices were necessary to "prevent waste" and "promote conservation" in the Guymon-Hugoton field, such regulation would be equally appropriate in the other fields producing the greater part of the State's supply. Indeed, prices in those fields are in many instances far less than 9.8262 cents (321R. 66, 39) The state commission has never bothered to explain why, if the taking of natural gas from the Guymon-Hugoton field at less than 9.8262 cents causes "economic waste," physical waste, loss to royalty owners, loss of taxes to the State, inequitable taking from a common reservoir, and discrimination among producers (321R. 134), the taking of gas at far lower prices in other fields does not result in similar disadvantages.

The answer, of course, lies in the relative percentages of Oklahoma-produced gas which is consumed within the State. In a field like Guymon-Hugoton, where 90% of the gas is transported to markets in other states, there is little to deter the state commission from raising the minimum prices to whatever figure "will produce the maximum revenues consistent with a policy of maintaining markets," as proponents' witness recommended. (321R. 57) In such cases the voice of the out-of-state consumer is faint and far off.

Where 85% of the gas is consumed within the State, however, as is true of the production from the other fields, quite different considerations prevail. There, the voice of the local consumer is heard and his interests furthered. The royalty owners who seek increases in gas prices merely

because "they are very unhappy" with present prices (321R. 66) are offset to some extent by the local consumers who are equally unhappy at having their gas bills increased.

The state commission resolved this problem by the simple expedient of setting minimum prices in the one field from which nearly all of the gas is shipped interstate, while permitting arms-length prices to remain in effect in the fields which supply gas principally for consumption in Oklahoma. But the very basis of this expedient condemns it under the Commerce Clause. This Court in *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177 put the matter thus:

> "State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought to impinge upon the constitutional prohibition even though Congress has not acted. * * * [Citations]
>
> "Underlying the stated rule has been the thought, often expressed in judicial opinion, that when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state. * * * [Citations]" 303 U. S. at 184-5 (footnote).[15]

This Court has been particularly alert to the possibility that a state statute or regulation results in discrimination against interstate commerce, "whether forthright or in-

[15] Cf. *Joseph* v. *Carter & Weekes Stevedoring Co.*, 330 U. S. 422, 433-4.

genious." *Best & Co.* v. *Maxwell*, 311 U. S. 454, 455.[16] And it is immaterial that intrastate commerce is subject to the same proscription as that moving interstate. *Dean Milk Co.* v. *City of Madison*, 340 U. S. 349, 354. Determination of discrimination is not dependent upon legislative declarations of purpose but upon the practical effect of the state's action on interstate commerce. *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1, 10.

The discrimination against interstate commerce comes into existence in this case because of the fact that the citizens of Oklahoma City and Tulsa are not affected by, and thus have no interest in, increases in minimum prices fixed for sales in the Guymon-Hugoton field like that of the citizens of Chicago and Detroit. Thus, when a witness supporting increased prices in that field testified that the interests of Oklahoma and its citizens lies in prices that will produce the maximum possible revenues to producers (321R. 57), no representative of consumer interests in Oklahoma arose to say the contrary. In short, there were present none of the "political restrictions which are normally exerted in legislation where it affects adversely some interests within the state." *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177 at 185. Discrimination against interstate commerce, real and potent, alone makes the state commission's orders void under the Commerce Clause.

[16] The Court will recall that the state "gathering tax" involved in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157, had been so drafted as to "tax the pipeline gas that goes out of the State of Texas and give as much protection as possible to Texas industries." See Joint Brief of Appellants in Nos. 198, 199, 200 and 201, 1953 Term, pp. 20-21.

3. The Cities Service Case Does Not Support the State Commission's Action.

In the court below appellees relied upon *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, as support for the state commission's attempt to fix minimum prices for the sales here in question. This Court did not there consider the effect of possible conflict with federal authority by virtue of the Natural Gas Act, as it was required to do in the *Phillips* case. Nor was it presented with a showing of discrimination against interstate commerce such as that just discussed. 340 U. S. at 188-9.

It is equally clear, moreover, that this Court did not consider or decide the question whether, under the Commerce Clause alone, the state commission could regulate sales of the kind here involved even absent discrimination against interstate commerce. The sales involved in the *Cities Service* case were wellhead sales—sales of raw gas made on the producing properties immediately following production. Subsequent to that purchase, the raw gas was gathered by the purchaser, Cities Service, together with gas from many other wells, to a gasoline plant of an affiliated company, where the gas was processed for the extraction of liquids. Thereupon Cities Service moved the residue gas to its depot or concentration point near Blackwell, Oklahoma, where it was commingled with gas from other Oklahoma fields. Afterwards a portion of the commingled gas was transported by Cities Service to certain of its Oklahoma markets and the remainder to its markets in other states.[17] Thus, while most of the gas involved in the *Cities Service* case ultimately found its way interstate, it did so only after substantial gathering, processing and commingling operations had been performed in Oklahoma subsequent to the purchase of the raw gas at the wellhead.

[17] See record in *Cities Service* case, Nos. 73 and 153, October Term 1950, pp. 462-3.

This Court did not therefore, consider or decide whether a state has power to regulate sales of residue gas made at the very mouth of an interstate pipeline after gathering and processing have been completed and the interstate journey has actually begun. This is emphasized by the Court's reliance on *Parker* v. *Brown*, 317 U. S. 341, a case in which a state raisin proration program was upheld under the Commerce Clause, even though 95% of the product ultimately found its way into interstate commerce, on the ground that the restrictions were imposed

> "* * * upon the sale within the state of a commodity by its producer to a processor who contemplates doing, and in fact does work upon the commodity before packing and shipping it in interstate commerce * * *" 317 U. S. at 359.

The *Cities Service* case presented a somewhat similar situation: local regulation of the sale of a product *prior* to gathering, processing and shipment in interstate commerce. At that time the gas was not suitable for interstate transportation or for consumption without subsequent processing and dehydration. This Court was therefore very careful to limit its decision, stating: "We hold on this record the Oklahoma Corporation Commission issued valid orders * * *." The present sales, on the other hand, are made after those operations have been completed and the residue gas has actually started its interstate movement. *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 156 at 168-9.[18]

---

[18] In its decision in *Wisconsin* v. *Federal Power Commission*, 205 F. 2d 706, affirmed by this Court's decision in the *Phillips* case, the Court of Appeals for the District of Columbia also pointed out this distinction as follows:

> "Since Phillips' sales are made after the gas has been gathered into trunk lines *Cities Service Gas Co.* v. *Peerless Gas & Oil Co.*, 1950, 340 U. S. 179, * * * is irrelevant." 205 F. 2d at 710 (note 9).

Any attempted reliance by appellees on *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190, a companion case to *Cities Service*, is likewise misplaced. As this Court made clear, appellant did not there argue that the state commission's orders violated the Commerce Clause but contended only that the orders were vague and lacked reasonable relation to their purported basis. 340 U. S. at 192.

D. The State Court's Attempts to Rewrite the Gas Purchase Contracts Cannot Be Sustained.

In what can only be characterized as an attempt to evade this Court's decisions construing the Natural Gas Act and the Commerce Clause, the Supreme Court of Oklahoma purported to construe the gas purchase contracts here involved as providing, not for sales of residue gas at the outlets of gasoline plants after production, gathering and processing have been completed, but for sales of the residue constituent of the gas while it is still a part of the raw natural gas in the underground formations—prior even to production of the gas. While appellees have never attempted to defend this rationalization, brief comment seems appropriate.

In its opinion in No. 191, the state court stated its theory as follows:

> "These contract provisions tend strongly to support the Commission's findings, and to indicate that in truth and in fact Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced from under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought." (191R. 160)

And in its subsequent opinion upholding the state commis-

sion's order in No. 321 the court reiterated that the transaction provided for in the gas purchase contracts

> "* * * amounts to a sale of residue gas in place; the sale is made before any movement of any kind starts and before anything in the nature of interstate commerce occurs, regardless of the acts required to be performed before the residue gas is separated from other constituents of the raw gas and regardless of the point of delivery to the purchaser." (321R. 176)

This startling theory is contrary to the undisputed facts, the construction of identical contracts by this Court, the Court of Appeals and the Federal Power Commission and is inconsistent with the orders of the state commission itself.

First, Natural's contract with Harrington & Marsh provided expressly that the latter would construct gathering lines and a gasoline plant, which they would operate, and that:

> "A metering station to be installed and operated by Natural * * * shall be located near the outlet of said plants *at which point title to the gas shall pass to Natural;* * * *" (191R. 103; 321R. 252)

In addition, other provisions of the contract demonstrate beyond any conceivable doubt that the gas was the property of the sellers until delivery of the residue at the outlet of the gasoline plant. For example, Harrington & Marsh agreed to

> "* * * do and perform all acts and things within reason which are necessary to continue in force, renew and maintain *their ownership of the gas reserves and their exclusive right to produce gas therefrom.*" (191R. 109; 321R. 258)[19]

[19] Panoma has never contended that Natural purchased gas in the ground. Its president testified that the meter station near the outlet of Panoma's gasoline plant is "our point of sale." He also stated that the commodity there sold was "obviously" residue gas. (191R. 34)

The state court's opinion in No. 321 is, of course, also applicable to Phillips' sales to Michigan-Wisconsin and Panhandle. With respect to Michigan-Wisconsin's operations, the parties, including the attorney for the state commission, had expressly stipulated:

> "* * * Phillips compresses and processed [*sic*] the raw gas produced from its wells in Oklahoma and Texas and the residue is then sold and delivered to Michigan-Wisconsin in Hansford County, Texas. *Title to the said gas so produced by Phillips does not pass into Michigan-Wisconsin until it is delivered at the meter of Michigan-Wisconsin in Hansford County, Texas.*" (321R. 143)

The plain language of the contracts and the express understanding of the parties are thus completely opposed to the novel theory evolved by the state court.

Second, it is significant that never during the course of the long litigation culminating in this Court's decision in the *Phillips* case did Phillips or any other party so much as suggest that it sold residue gas at any point other than at the outlet of its gasoline plant. The opinion of the Federal Power Commission, 10 F.P.C. 246, the opinion of the Court of Appeals, 205 F. 2d 706, and this Court's opinion, 347 U. S. 672, all construe Phillips' contracts with Michigan-Wisconsin and Panhandle Eastern, which are identical in all respects here material with Natural's contract with Harrington & Marsh, as sales at the outlets of gasoline plants. As this Court stated

> "After processing is completed, the gas flows from the processing plant through an outlet pipe, of varying lengths up to a few hundred feet, to a delivery point where the gas is sold and delivered to an interstate pipeline company." (347 U. S. at 675)[20]

[20] This same interpretation was given the same contracts in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157.

The one circumstance seized upon by the state court for its remarkable interpretation of the contracts was that Phillips and Panoma have "dedicated" the gas contained in certain of their leases to the fulfillment of their obligations under the contracts. Contract dedications are very common provisions which are required by the Federal Power Commission before it will authorize construction of a gas pipeline. (321R. 59) They constitute an assurance that the pipeline has an adequate gas supply by preventing a sale of the dedicated gas to other purchasers. It had never been suggested, prior to the Oklahoma court's decision in No. 191, that the dedication itself constituted a sale of residue gas in the ground. Cf. *Phillips* v. *Henderson Co.*, 101 Okla. 277, 225 Pac. 668, 671. This Court certainly did not so interpret the dedication provisions of the contracts before it in the *Phillips* case.

Third, if the state court's conclusion that the gas was actually sold in the ground were correct, the state commission's orders would not even apply to those sales. Its order in No. 321, for example, fixes the price for gas sold (a) at the wellhead, (b) during or upon conclusion of gathering and (c) after processing. The order thus does not purport to regulate sales in the ground. Indeed, if Natural and the other pipeline companies were really the owners of the gas in the ground prior to its production, it is *they* who would be in the position of producers.

Actually, of course, the state court's theories are so unrealistic as to be self-destroying. In such circumstances this Court will exercise its own judgment as to both the facts and the law. When the holdings of a state court rest on an interpretation of a contract, this Court will itself interpret the contract to see if the decision "rests on a fair or substantial basis." *Broad River Power Co.* v. *South Carolina*, 281 U. S. 537, 540. And, while this Court will be inclined to accept a reasonable interpretation of a

contract by a state court, that interpretation will be rejected if "manifestly wrong." *New York Transit Co.* v. *New York*, 303 U. S. 573, 593; *Southern Wisconsin Ry. Co.* v. *Madison*, 240 U. S. 457, 461. This case is a singularly appropriate one for application of that doctrine.

II.

THE STATE COMMISSION'S ORDER IN NO. 191 VIOLATES THE PRINCIPLES OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

The state commission's order in No. 321 at least has the virtue of treating all pipeline companies which purchase residue gas produced in the Guymon-Hugoton field alike. Each is required to pay 9.8262 cents per Mcf. for residue gas at the outlet of its supplier's gasoline plant. The state commission's order in No. 191, which is directed solely against Natural, lacks even that virtue. By that order, Natural was directed to pay to Panoma a price substantially higher than that paid by other pipeline companies to their supplier, Phillips. This distinction, never explained or justified, creates an inequality of the kind condemned by the Equal Protection Clause of the Fourteenth Amendment.

When the state commission established its original wellhead price order of 7 cents per Mcf. in 1946, Phillips Petroleum Company intervened, requesting that the order be vacated or clarified as to it, since that company sells no gas at the wellhead but, instead, sells the liquid and residue constituents of the raw gas separately after conducting gathering and processing operations. The state commission denied this petition on the ground that Phillips was obtaining 7 cents for its gas because it was receiving from its sales of residue gas and liquid hydrocarbons *combined* a gross return which was the approximate equivalent of

7 cents per Mcf. "within the terms and meaning of Orders Nos. 19514 and 19515." (191R. 141)

Despite the fact that the state commission thus construed its original order as permitting the aggregation of receipts from liquid hydrocarbons and residue gas in the case of Phillips, it reached precisely the opposite conclusion in interpreting the same original wellhead order upon Panoma's application in No. 191. Natural there pointed out that, whereas Phillips was receiving only 4.67 cents for its residue gas and 2.81 cents for its liquids, a total of 6.98 cents per Mcf., Panoma was receiving 5.12 cents for its residue gas from Natural plus 4.18 cents from the liquid constituents (191R. 136), a total of 9.30 cents per Mcf. The state commission nevertheless held that Panoma's receipts from the liquid constituents should not be considered in determining whether it was realizing 7 cents per Mcf. and that Natural's payments for residue gas alone must equal the minimum wellhead price (191R. 86)

From the effective date of the original wellhead order, January 1, 1947, until it was superseded by the 9.8262 cent order effective August 1, 1952, therefore, Phillips Petroleum Company was held to have complied with the original order by receiving an aggregate of 6.98 cents per Mcf. from residue and liquid constituents of its natural gas, while Panoma was held to be violating the same order although its receipts aggregated 9.30 cents. Accordingly, while Panhandle Eastern Pipe Line Company was permitted by the state commission to pay only its contract price of 4.67 cents per Mcf. to Phillips because Phillips was receiving 2.81 cents for the liquids, Natural was ordered to pay 7 cents per Mcf. (an increase of 35% over its contract price) to Panoma, which received 4.81 cents in addition for its liquids.

The state commission's answer to Natural's contention

that it was not receiving equal treatment was simply that the commission's order with respect to Phillips was not intended to have general applicability; that

> "* * * this Commission does not feel it is bound herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19702 [the Phillips order]." (191R. 85)

This is hardly an adequate explanation of an obvious discrimination in the treatment of companies whose operations are identical. There is here no question of different classifications, as to which the only issue is whether the classification is fairly related to the object of the regulation. *Railway Express Agency, Inc.* v. *New York*, 336 U. S. 106; cf. *Smith* v. *Cahoon*, 283 U. S. 553, 566-7. The state commission recognized that Phillips and Panoma carry on similar operations when it entered its order in No. 321, which applies equally to both. Why a distinction should have been drawn prior thereto is difficult to understand.

Since *Yick Wo* v. *Hopkins*, 118 U. S. 356, this Court has steadfastly held that when a state law or state regulation, fair on its face and impartial in appearance, is so applied as practically to make unjust and unreasonable distinctions between persons in similar circumstances, the denial of equal justice is within the prohibition of the Equal Protection Clause of the Fourteenth Amendment; that the purpose of the Equal Protection Clause is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute, or by its improper execution through duly constituted agents, *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 352; that an actual discrimination in the application of a law "is as potential in creating a denial of equality of rights as a discrimination made by

law"; and that equal protection of the law may be denied by a state through the legislature, through the courts, or through its executive or administrative officers, in any of which events the action of the state violates the Equal Protection Clause of the Fourteenth Amendment, *Torrance* v. *Florida*, 188 U. S. 519, 521; *Rogers* v. *Alabama*, 192 U. S. 231. As stated by Judge Learned Hand in *East Coast Lumber Terminal* v. *Town of Babylon* (2nd Cir.), 174 F. 2d 106, 112:

> "It has indeed been the law for over sixty years [citing *Yick Wo* v. *Hopkins*] that the Amendment covers the unequal enforcement of valid laws, as well as any enforcement of invalid laws; * * *"

Here the fact of different treatment is admitted. Under the same minimum price order Panoma would receive substantially more than Phillips and Panhandle Eastern would pay substantially less than was required of Natural. No reason for the distinction can be shown. That the effect of this discrimination upon Natural has been substantial cannot be denied. This discrimination was recognized and removed for the future by the state commission's order involved in No. 321. Tested by the commands of the Equal Protection Clause, therefore, the state commission's order in No. 191 cannot be sustained.

CONCLUSION.

The orders of the state commission in Nos. 191 and 321 both involve attempted state regulation of interstate sales of natural gas for resale. As such they invade a field of exclusive federal jurisdiction under the Commerce Clause, particularly in view of the comprehensive system of federal regulation of the identical sales established by the Natural Gas Act. Furthermore, minimum price regulation in Oklahoma, which is confined to the one gas field

from which almost all of the gas goes interstate, is aimed at and discriminates against interstate commerce.

Finally, the state commission's order in No. 191, which plainly discriminated against Natural as compared with other pipeline companies, plainly contravenes the Equal Protection Clause of the Fourteenth Amendment.

The judgments of the Supreme Court of Oklahoma should be reversed.

Respectfully submitted,

CLARENCE H. ROSS,
DOUGLAS F. SMITH,
D. H. CULTON,
COLEMAN HAYES,
CHARLES C. MCDUGALD,
WARREN T. SPIES,
ARTHUR R. SEDER, JR.,
Attorneys for Appellant.

11 So. La Salle St.,
Chicago 3, Illinois.

APPENDIX A.

Constitution of the United States of America.

Article I, Section 8:

The Congress shall have Power * * *
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; * * *

Amendment XIV, Section 1:

* * * No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

The Natural Gas Act.

(52 Stat. 821; 15 U. S. C. § 717 *et seq.*)

Section 1 (15 U. S. C. § 717):

(a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local dis-

tribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

Section 4 (15 U. S. C. § 717c):

(a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

* * * * *

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the

time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: * * *

* * * * *

Section 5 (15 U. S. C. § 717d):

(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however*, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new

schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

* * * * *

Section 7 (15 U. S. C. § 717f):

* * * * *

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

* * * * *

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
MAR 21 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

REPLY BRIEF OF APPELLANT.

CLARENCE H. ROSS,
DOUGLAS F. SMITH,
D. H. CULTON,
COLEMAN HAYES,
CHARLES C. MCDUGALD,
WARREN T. SPIES,
ARTHUR R. SEDER, JR.,
Attorneys for Appellant.

11 South La Salle Street,
Chicago 3, Illinois.

THE GUNTHROP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE

Statement 1

I. State minimum price regulations are inconsistent with federal jurisdiction over interstate sales of gas for resale 2

A. This Court's decision in Phillips Petroleum Company v. Wisconsin settled the question.. 3

B. Appellees' "dual regulation" contention is unsound 4

1. The argument that the Natural Gas Act contemplates a system of dual regulation 6

2. The argument that dual regulation should be upheld because of the different purposes involved 10

3. The argument that the Court should not decide which agency has jurisdiction until a "direct conflict" arises 12

4. The argument that the Natural Gas Act was not intended to displace state conservation regulations 17

II. Oklahoma's minimum price orders are invalid under the Commerce Clause even apart from their conflict with the Natural Gas Act 20

A. The Cities Service case is not authority for the orders here involved 22

B. The regulation here involved is not a regulation of production but of price 26

C. The orders of the state commission discriminate against interstate commerce 28

III. The state commission's order in No. 191 violates the principles of the Equal Protection Clause of the Fourteenth Amendment 30

Conclusion 31

Appendix A 33

Citations.

Cases.

Baldwin v. Seelig, 294 U. S. 511 24

Bethlehem Steel Co. v. New York Labor Relations Board, 330 U. S. 767 15

Buck v. Kuykendall, 267 U. S. 307 24

Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co., 237 U. S. 597 11

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179 ..... 2, 22, 23, 24

Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 11

Federal Power Commission v. Natural Gas Pipeline Co., 315 U. S. 575 16

First Iowa Hydro-Electric Co-op. v. Federal Power Commission, 328 U. S. 152 9

Foster-Fountain Packing Co. v. Haydel, 278 U. S. 1 .. 27

Freeman v. Hewitt, 329 U. S. 249 ..... 20, 23

Geer v. Connecticut, 161 U. S. 519 27

Hood v. Du Mond, 336 U. S. 525 26

Hope Natural Gas Co. v. Hall, 274 U. S. 284 24

Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U. S. 498 ..... 8, 10, 19

Lemke v. Farmers Grain Co., 258 U. S. 50 25

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 167 ..... 24, 27
Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346 25
Missouri v. Kansas Natural Gas Co., 265 U. S. 298 19
Napier v. Atlantic Coast Line R. Co., 272 U. S. 605 ..... 11, 12
Oliver Iron Mining Co. v. Lord, 262 U. S. 172 24
Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 341 U. S. 329 8
Panhandle Eastern Pipe Line Co. v. Public Service Commission, 332 U. S. 507 8
Parker v. Brown, 317 U. S. 341 ..... 11, 24
Pennsylvania v. West Virginia, 262 U. S. 553 27
Phillips Petroleum Co. v. Oklahoma, 340 U. S. 190 23
Phillips Petroleum Co. v. Wisconsin, 347 U. S. 672 ..... 2, 3, 4, 5, 6, 13, 17, 18, 19, 20, 28
Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U. S. 83 ..... 19, 25
Public Utilities Commission v. United Fuel Gas Co., 317 U. S. 456 ..... 7, 8, 9, 10, 17, 20
Shafer v. Farmers Grain Co., 268 U. S. 189 25
State Corporation Commission of Kansas v. Federal Power Commission, 206 F. 2d 690 ..... 17, 20, 28
Toomer v. Witsell, 334 U. S. 385 27
United States v. Public Utilities Commission, 345 U. S. 295 15

Statutes.

Federal Power Act, 16 U. S. C. § 791a et seq 9
Natural Gas Act, 15 U. S. C. § 717 et seq ..... 2, 3, ... 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18

Orders.

In Matter of Dorchester Corporation, Docket No. G-6505 (Federal Power Commission) 14, 33-37

Miscellaneous.

Congressional Record, Vol. 81, page 6721 18
Federal Register, Vol. 19, page 8808 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 191.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,
Appellees.

No. 321.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

REPLY BRIEF OF APPELLANT.

STATEMENT.

Although appellees in Nos. 191 and 321 have filed separate briefs, their arguments in support of the respective orders of the state commission involved in the two cases are substantially identical. In both cases it is argued (1) that the state orders may be sustained despite the acknowl-

edged jurisdiction of the Federal Power Commission over the same sales under the Natural Gas Act, and (2) that the state commission's orders must be held to be consistent with the Commerce Clause in view of this Court's decision in *Cities Service Gas Co* v. *Peerless Oil & Gas Co.*, 340 U. S. 179. In addition, appellees in No. 191 dispute appellant's contention that the state commission's order in that case denies appellant the equal protection of the laws guaranteed by the Fourteenth Amendment. These points will be considered in that order.

I.

STATE MINIMUM PRICE REGULATIONS ARE INCONSISTENT WITH FEDERAL JURISDICTION OVER INTERSTATE SALES OF GAS FOR RESALE.

Last term this Court held in *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, that Phillips is a "natural gas company" whose rates for sales of gas in interstate commerce for resale are subject to regulation by the Federal Power Commission under the Natural Gas Act. Appellees all concede that Panoma Corporation's sales to Natural Gas Pipeline Company of America are of the same character as those involved in the *Phillips* case and are, therefore, also subject to federal regulation, which is now being actively exercised.

Appellees nevertheless argue that state regulation of the same sales should be upheld as an exercise of the State's conservation power. Thus, the issue is squarely raised whether a state, purporting to act in the interest of "conservation," may fix the price at which natural gas shall be sold in interstate commerce even when that sale price is also subject to federal regulation under the Natural Gas Act.

A. This Court's Decision in Phillips Petroleum Company v. Wisconsin Settled the Question.

Appellees' contention that the issue just stated was not before this Court in the *Phillips* case last term is difficult to reconcile with the long and vigorous arguments made by the producing states and Phillips in that case. The Court will recall that producer interests had introduced evidence before the Federal Power Commission which led that body to conclude that its exercise of jurisdiction over the sales in question would conflict with the exercise by the producing states of their regulatory functions, including, in particular, Oklahoma's minimum price regulations. See Record in No. 280, 1953 Term, p. 1746.

On the basis of this determination, Phillips and certain producing state authorities, including appellee Corporation Commission of Oklahoma, made elaborate arguments before the Federal Power Commission, the Court of Appeals and this Court that *because* of the necessary conflict with state minimum price regulations that would result from federal regulation of these sales, the Natural Gas Act should not be construed to extend to such sales. They contended throughout the proceedings that the existence of federal jurisdiction over such sales would result in irreconcilable conflict with state regulation. The idea that the two agencies, both attempting to regulate the price of a single sale, could exist in harmony was rejected as "in direct conflict with all that has been said by the Supreme Court concerning the respective powers of the Federal Power Commission and the States."[1]

This Court recognized that the state regulations so strongly emphasized by the producer interests would con-

[1] Brief of Phillips Petroleum Company before the Federal Power Commission in Docket No. G-1148, filed June 22, 1951, p. 104.

flict with federal jurisdiction over sales of the kind here involved and said:

> "The short answer to this contention is that the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control. We expressly rejected any implication to the contrary in the *Interstate* case." 347 U. S. at 681.

It is thus clear beyond cavil that the question of conflict between state and federal regulation of interstate sales was presented to and decided by this Court in the *Phillips* case. State minimum price regulations obviously cannot be binding upon natural gas companies whose rates are subject to Federal Power Commission jurisdiction without also being binding upon the Commission itself. But if the state's orders are conclusive on the Federal Power Commission, its jurisdiction will necessarily "vary from state to state, depending upon the degree of state regulation," a result which this Court specifically rejected in the *Phillips* case.

B. Appellees' "Dual Regulation" Contention Is Unsound.

In both cases appellees argue that dual regulation of rates at which independent producer natural gas companies sell to interstate pipeline natural gas companies should be recognized—at least until the minimum fixed by the state exceeds the maximum fixed by the Federal Power Commission. The basis of this contention should be made clear.

In the *Phillips* case, appellees argued that sales of the type here involved are a part of the production or gathering process and are therefore subject to *exclusive* state control under the exemption provisions of section 1(b) of the Natural Gas Act. This Court rejected that contention,

holding that these sales are not a part of production or gathering but are subject to the jurisdiction of the Federal Power Commission. Now appellees are back with precisely the same argument, that state regulation of these sales is a regulation of production or gathering. But in view of the *Phillips* decision, they now argue that section 1(b) contemplates, not exclusive state control, but dual federal-state regulation of the same transaction. Thus, in attempting to justify state regulation of the sales here involved, appellees say:

> "The production or gathering language of Section 1(b), as construed and applied by this Court, shows that Congress intended that a state should be free to regulate the activity of production." (Br. 321, p. 40.)[2]

But this Court, in answering the comparable argument of the producer interests in the *Phillips* case specifically held that these sales are not a part of production or gathering, as used in the Act:

> "We are of the opinion * * * that production and gathering, in the sense that those terms are used in § 1(b), end before the sales by Phillips occur." 347 U. S. at 678.
>
> "* * * sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption." *Id.* at 680-681.

Appellees' present argument is thus subject to the same defects as its progenitor. If the sales here involved are not a part of "production or gathering" so as to be exempt from federal regulation under section 1(b) of the Act, they can hardly be a part of "production or gathering" so as to justify dual state-federal regulation. In short, the State's

[2] References to the brief of appellees in No. 191 will be designated (Br. 191, p. ....) and to the brief of appellees in No. 321 as (Br. 321, p. ....). Emphasis is supplied throughout unless otherwise indicated.

argument in support of its authority to regulate these sales in conjunction with the Federal Power Commission rests on the same basis as, and has no more validity than, its argument in the *Phillips* case that its power to regulate such sales is exclusive.

As detailed in appellees' briefs, the basic argument just discussed has several facets: (1) that this Court's decisions recognize the propriety under the Natural Gas Act of dual federal-state regulation, (2) that such dual regulation should be upheld because here the purposes of federal and state regulation are different, (3) that the Court should await a "direct conflict" before resolving the question which agency has jurisdiction, and (4) that the Natural Gas Act was not intended to displace state conservation regulations. Brief comment with regard to each contention is appropriate.

1. The argument that the Natural Gas Act contemplates a system of dual regulation.

It is beyond doubt that, in enacting the Natural Gas Act, Congress did contemplate a dual system of regulation of the natural gas industry. But Congress emphatically did not contemplate dual regulation of the price of the same sales by both federal and state agencies. Rather, it carefully set the boundaries within which each was to act by exempting certain activities from federal control in section 1(b) of the Act. The dual regulation contemplated, therefore, was state regulation of the activities exempted by section 1(b) and federal regulation of the remainder, not contemporaneous regulation of the same activity by both federal and state authorities.

This Court does not need to be reminded that the Natural Gas Act was passed principally to fill the "gap" in regulation of natural gas companies resulting from decisions

prohibiting state regulation of certain interstate aspects of the natural gas business. *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, 682-3 and cases cited. The Natural Gas Act accordingly exempted state regulation in areas where the states had been held competent to regulate, while federal regulation was extended to those areas where state regulation had been prohibited.

The principal basis of this Court's decision in the *Phillips* case, and the single basis emphasized by Mr. Justice Frankfurter's concurring opinion, was that sales such as those here involved were not subject to state regulation at the time the Natural Gas Act was passed and thus, being within the "gap," were included within the ambit of federal regulation. And within that area, as the Act makes clear, federal authority is intended to be exclusive. This Court pointed out these principles in *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456, 467, as follows:

> "It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary to that of the states, *without any confusion of function.* The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the Act, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious dual system of regulation of the natural gas industry— federal and state regulatory bodies operating side by side, each active in its own sphere."

Appellees would have this Court hold that the "dual regulation" contemplated by Congress involved regulation by both state and federal authorities in the same sphere, not complementary but conflicting in their authority.

The cases relied upon by appellees simply emphasize the

dichotomy in the structure of the Act which they now seek to destroy. In *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, the question was whether a state commission could regulate direct sales by an interstate pipeline to industrial customers. This Court held that, because such sales had been declared to be subject to state regulation prior to enactment of the Natural Gas Act, they were not within the "gap" and thus were not sales over which federal authority had been asserted under the Act. Within the area where state regulation had previously been prohibited, however, the Court affirmed that Congress had occupied the field. 332 U. S. at 519.[3]

With the *Panhandle Eastern* cases relied upon by appellees, the Court should compare *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498. There, a state regulatory body had ordered a natural gas company to establish a connection with and supply gas to a local distribution company. This Court concluded, first, that "Congress, by the Natural Gas Act, has brought under national control the very matters which the state has undertaken to regulate by the order." 314 U. S. at 506. Having reached that conclusion, the Court held unanimously that Congress "has given plenary authority to the Federal Commission," and that the state commission was without power to enter its order. Id. at 510.

Public Utilities Commission v. *United Fuel Gas Co.*, 317 U. S. 456, is also directly in point. There, also, the Court found first that the Natural Gas Act had vested authority in the Federal Power Commission to regulate the matters

[3] *Panhandle Eastern Pipe Line Co.* v. *Michigan P. S. C.*, 341 U. S. 329, was similarly based upon the principle that the state regulation was of a type which had been subject to state regulation prior to the Natural Gas Act and was thus intended by Congress to be within the exemption of facilities used for the local distribution of natural gas to consumers.

which the state had undertaken to regulate (sales by interstate pipelines to local distribution companies). After examining the scope and extent of the Federal Commission's jurisdiction, this Court declared:

> "Upon the undisputed facts in this record, United is plainly subject to the *exclusive* jurisdiction of the Federal Power Commission with respect to the rates and charges for natural gas transported by it from West Virginia and Kentucky to Ohio. * * *
>
> The power to fix rates for natural gas transported and sold in interstate commerce has been entrusted *solely* to the Federal Power Commission." 317 U. S. at 467-8.

Finally, the very contention now made by appellees was also made and rejected in *First Iowa Hydro-Electric Co-op v. Federal Power Commission*, 328 U. S. 152, a case arising under the Federal Power Act. There, it was contended that a state and the Federal Power Commission had dual control over the question whether a company subject to the jurisdiction of the Federal Power Commission should be permitted to construct a dam. But this Court said, in language entirely pertinent to the present claim under the Natural Gas Act:

> "In the Federal Power Act there is a separation of those subjects which remain under the jurisdiction of the states from those subjects which the Constitution delegates to the United States and over which Congress vests the Federal Power Commission with authority to act. To the extent of this separation, the Act establishes a dual system of control. The duality of control consists merely of the division of the common enterprise between two co-operating agencies of Government, each with final authority in its own jurisdiction. The duality does not require two agencies to share in the final decision of the same issue. *Where the Federal Government supersedes the state government there is no suggestion that the two agencies both shall have final authority.*" 328 U. S. at 167.

In short, the Natural Gas Act does contemplate dual federal-state regulation of the natural gas industry. But within the area where Congress has vested regulatory authority in the Federal Power Commission, and specifically in the area of regulation of rates of interstate sales of gas for resale, that authority is exclusive. The cases relied upon by appellees involved matters *within* the exemption provisions of section 1(b) of the Natural Gas Act. But the *Phillips* case decided that sales of the character here involved were outside the exemption.

2. The argument that dual regulation should be upheld because of the different purposes involved.

Appellees appear to suggest that, while dual federal-state regulation of the same sales would be improper if the state regulations were imposed for the same purposes as the federal regulation, state regulation should be sustained if it is intended to serve a different purpose. (See Br. 321, p. 32.) Indeed, this appears to be the sole basis upon which appellees seek to distinguish the *United Fuel Gas Co.* and *Illinois Natural Gas Co.* cases.[4]

This Court certainly did not suggest in either of those cases that state jurisdiction over the very matters which Congress has brought under national control would have been sustained if the state had asserted that its purpose was different from that underlying federal regulation. In fact, appellees' present argument is a curious inversion of the usual argument that state regulation should be upheld because its purposes are the same as, or complementary to,

[4] Appellees state at p. 32 of their brief in No. 321: "No doubt within the area *and for the purposes prescribed by Congress* the authority of the Federal Power Commission is paramount and exclusive. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498; *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456."

the federal regulatory scheme. *Cf. Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 169; *Parker* v. *Brown*, 317 U. S. 341, 367.

The fact that the federal and state regulations were intended to serve different purposes, which appellees here concede and even seek to capitalize, has always been considered a strong ground for holding the state action invalid. For it necessarily follows that different purposes are more likely to result in conflict and repugnance than similar purposes, as this Court has often pointed out. Mr. Justice Holmes, with characteristic incisiveness, rejected an argument that a state law relating to claims against interstate carriers could coexist with the Carmack Amendment to the Interstate Commerce Act with the statement:

> "It is suggested that the act is in aid of interstate commerce. The state law was not contrived in aid of the policy of Congress, but to enforce a state policy differently conceived; * * *" *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604.

Moreover, in *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, this Court considered and rejected the very contention now made by appellees. There, a state law requiring automatic locomotive fire doors and cab curtains was held invalid as in conflict with the federal Boiler Inspection Act. The Court's opinion notes that the main argument by the State was that the federal and state laws involved were "aimed at distinct and different evils" in that the federal act was designed solely to prevent accidental injury, while the state act was intended to prevent sickness and disease due to exposure. 272 U. S. at 612. But the Court, speaking through Mr. Justice Brandeis, rejected the argument, pointing out that:

> "The federal and the state statutes are directed to

> the same subject—the equipment of locomotives. They operate upon the same object. * * * Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or different their purpose." 272 U. S. at 612-613.

When appellees argue, therefore, that Oklahoma's minimum price orders with respect to sales subject to rate regulation by the Federal Power Commission should be sustained *because* the purposes of the two regulatory systems are different, they rely upon a condition which has always been thought to require precisely the contrary result. The attempt to distinguish prior decisions setting aside state regulation of matters subject to Federal Power Commission jurisdiction on the ground that in this case the state's regulation reflects a different purpose than that of the Natural Gas Act thus simply emphasizes the essential repugnance and conflict in attempted dual regulation of the same sales.

3. The argument that the Court should not decide which agency has jurisdiction until a "direct conflict" arises.

Appellees further argue that the Court should await a "direct conflict" between orders of the state commission and the Federal Power Commission before deciding the question of the state's jurisdiction to regulate the price of sales of natural gas in interstate commerce for resale. It is suggested that the state may continue to set minimum prices and the Federal Power Commission to set maximum rates until the minimum set by the state exceeds the maximum fixed by the federal agency.

One answer to that contention is that such a conflict is actually presented by these appeals. The state commission has required payment of the prices set forth in the respective orders. The provisions of the Natural Gas Act,

and the Federal Power Commission's regulations thereunder, require that the contract rate be paid until a different rate is established by appropriate proceedings before the Commission.

Section 4 of the Natural Gas Act (15 U. S. C. § 717c) provides that every natural gas company must file with the Commission a schedule showing its rates and charges, together with all contracts affecting or relating to such rates, and that no changes may be made in such rates except after following the procedure before the Commission which the Act prescribes. It was thus the duty of all natural gas companies, including Panoma, to file schedules showing their contract prices with respect to each new sale of gas subject to the jurisdiction of the Federal Power Commission. And such contract prices, as stated above, constitute the only lawful rates under the Act until that rate has been changed in accordance with the statute.

The Federal Power Commission in its order 174-B, issued after this Court's decision in the *Phillips* case, recognized and applied this requirement of the statute. In that order the Commission directed that independent producers file and abide by rate schedules, which are defined in the order as "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954."[5] Thus, the Commission has recognized that the prices shown by the basic contract and supplements thereto constitute the only lawful rate of an independent producer natural gas company until changed in the manner prescribed by the Act.

Appellees imply that, because the Federal Power Commission has not made representations to the Court concerning this conflict, it must be assumed to have acquiesced in the state commission's directives. The fact is, however,

[5] 19 Fed. Reg. 8808.

that the Federal Power Commission, in permitting a rate filing by Dorchester Corporation (Panoma's successor) with respect to the sales here involved, expressly reserved the question whether the state commission's 9.8262 cent order could properly be considered a part of Dorchester's rate, pending this Court's decision in the instant cases. In its order (a copy of which is attached hereto as Appendix A) the Commission said:

> "In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.
>
> "To protect the rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

It is thus clear that the Federal Power Commission is awaiting this Court's decision as to whether it is required to adhere to Oklahoma's minimum price orders and that, except for the fact that the state's orders are presently outstanding, Dorchester's rates under section 4 of the Natural Gas Act would be the prices set forth in the contract between Natural and Harrington & Marsh, and supplements thereto. To argue that the Court should await a "direct conflict" is to overlook the clear and present conflict that now exists.

But appellees' contention that state regulation should be sustained until the state-fixed minimum exceeds the federal maximum faces a much more basic difficulty. That difficulty is that a conflict between state and federal authority arises from the very assertion by the state of power to regulate the same sales over which the Federal Power Commission is given jurisdiction under the Natural Gas Act. The question of jurisdiction does not depend upon whether the state and federal agencies have so far actually clashed in the exercise of their respective jurisdictions, for as this Court has said, "* * * the power to decide a matter can hardly be made dependent on the way it was decided." *Bethlehem Steel Co.* v. *New York Labor Relations Board*, 330 U. S. 767, 775. And again, in *United States* v. *Public Utilities Commission*, 345 U. S. 295, the Court pointed out that when federal and state agencies both assert jurisdiction over the same rates, the contention that the Court should await a direct clash of orders "misses the point that we are here considering whether or not the state agency had jurisdiction at the outset to consider these rates at all." 345 U. S. at 299 (footnote 1).

Rather, the question is whether state regulation of these sales would interfere with and limit the jurisdiction of the Federal Power Commission, as set out in the Natural Gas Act, over the same sales. And the answer, we submit, is that it clearly would do so. The Natural Gas Act provides that rates and charges for the sale of natural gas in interstate commerce must be "just and reasonable." § 4(a). Under § 4(c), companies subject to the Act must file schedules of rates and charges with the Federal Power Commission, and no changes in such schedules can be made without notice to the Commission and the public. § 4(d). Acting either upon its own motion or upon complaint, the Commission can inquire into the legality of rates and charges of companies subject to its jurisdiction and may

suspend changes in rates in the meantime. § 4(e). And after a hearing, the Commission "shall determine the just and reasonable rate" and "fix the same by order." § 5. To intrude a state-fixed floor or minimum into the comprehensive regulatory plan thus created by Congress would distort that plan beyond recognition.

Appellees seek support for their theory of dual regulation by contending that the state and federal agencies involved are not "competing authorities"; that the state may fix *minimum* prices in the interests of conservation while the Federal Power Commission prescribes *maximum* prices to protect consumers. (Br. 321, p. 31.) This contention overlooks the fact that under the Natural Gas Act the Federal Power Commission does not fix the maximum rate but sets "*the* just and reasonable rate * * * to be thereafter observed and in force." § 5. Whatever rate is set by the Federal Power Commission, in other words, is the single lawful rate that can thereafter be charged.

In this branch of their argument, appellees further urge that this Court should not presume that the Federal Power Commission "will act in disregard of the legitimate interests of the State of Oklahoma in the conservation of its natural resources." (Br. 321, p. 33.)[6] But they would deny the Commission the power to exercise any independent judgment on that subject. It is difficult to understand how the Federal Power Commission could set *the* just and reasonable rate, taking into account all of the various considerations involved, including the interests of the producing states, if its judgment was then circumscribed by minimum price orders fixed by state agencies.

[6] If appellee's contention is that the Federal Power Commission is required to give effect to Oklahoma's conservation policies in setting the rates of independent producers, that contention is, of course, erroneous. *Cf. Federal Power Commission* v. *Natural Gas Pipeline Company*, 315 U. S. 575, 586.

In short, the fact that the Federal Power Commission is given authority to ascertain and fix the single "just and reasonable rate" necessarily presupposes that it alone has jurisdiction to determine what is just and reasonable. To hold that a state's minimum price orders have independent validity is to take from the Commission the power to make that determination itself. This Court has already held in a parallel situation that "[t]he power to fix rates for natural gas transported and sold in interstate commerce has been entrusted *solely* to the Federal Power Commission." *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456, 468. The contention now being made, in the words of Judge Woodrough, "is simply another attempt to prevent the Federal Power Commission's exercise of its power to regulate within the confines of its own jurisdiction according to its own judgment * * *" *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690, 704.[7]

4. The argument that the Natural Gas Act was not intended to displace state conservation regulations.

The argument that the Natural Gas Act should not be so construed as to interfere with state conservation regulations is simply a repetition, with a few added variations, of the arguments made by the producer interests in the *Phillips* case. The argument was there rejected.

[7] Appellees in No. 191 faintly suggest (Br. 191, p. 25) that the order in No. 191 should be upheld because the *Phillips* decision did not come down until after that order had been superseded by the order in No. 321. But this contention overlooks the fact that the conflict here involved is between state regulation and the authority granted the Federal Power Commission under the Natural Gas Act. The fact that the Commission, through a mistaken view of its jurisdiction, did not enforce the Act prior to the *Phillips* case does not make the state's action any less an intrusion upon the domain of federal authority established by Congress.

As in the *Phillips* case, appellees point to statements in the committee reports and on the floor of Congress to the effect that the bill was not intended to interfere with state conservation measures. But they overlook the fact that these statements refer to state regulations that were then in existence and being lawfully exercised by the states. Thus, for example, Congressman Lea's statement referred to by appellees was that the "bill takes nothing from the State Commissions; they still retain all the State power *they have at the present time.*" 81 Cong. Rec. 6721. The exemption provisions of section 1(b) were drawn on this basis. As appellees themselves assert, no state commissions were then imposing minimum price regulations upon interstate sales of natural gas, and it cannot therefore be contended that the statements quoted by appellees referred to or were intended to apply to such state regulation of interstate sales. In short, it is one thing to say that the Natural Gas Act was not intended to interfere with state regulation as it then existed, involving such things as well spacing, proration, unitization and many other purely local activities. It is quite another thing to say that Congress intended to approve in advance any regulation a state might see fit to adopt in the future, whatever its national effect.

Appellees next attempt to avoid the force of the statement in the committee reports that the basic purpose of the Natural Gas Act was "to occupy the field in which the Supreme Court has held that the states may not act" by arguing (1) that state minimum price regulations adopted in the interest of conservation had not been held unlawful in 1936 and 1937 and thus were not within the "gap," and (2) that the Natural Gas Act was not designed to fill any gap in state conservation authority but only the gap in the authority of the states to regulate utility rates.

There are a number of difficulties with these arguments.

In the long history of Natural Gas Act litigation, it has never before been suggested, so far as we know, that the "gap" depended upon the kind of regulation the state was attempting to enforce. There is no suggestion in this Court's opinions construing the Act or in its legislative history that the gap—and hence the extent of Federal Power Commission jurisdiction—was of one dimension if the state interest involved was rate regulation for the benefit of consumers and of another dimension if the state interest involved was rate regulation for the benefit of producers and royalty owners.

The reason why Congress and this Court drew no such distinction in defining the limits of state and national power under the Natural Gas Act is that when the Act was passed, the power of the states to regulate the natural gas industry was usually based upon what Mr. Justice Stone referred to as the "mechanical test for determining when interstate commerce ends and intrastate commerce begins." *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 504. The cases cited by the committee reports as creating the gap, *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, and *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298, had applied this test. The question in those cases was not the motivation behind the state's regulation but whether it directly burdened interstate commerce.

The "gap" which Congress filled with a federal authority was thus a total absence of state power over certain transactions involving interstate commerce. One of these transactions was the interstate sale of natural gas for resale. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672. Having provided specifically and in detail for jurisdiction in the Federal Power Commission to regulate the transactions which the states had been held incapable of regulating, Congress certainly did not leave it open to a

state to intrude upon the federal domain merely by asserting that its interest was "conservation," rather than "utility rate regulation."[8]

In sum, state minimum price regulation of the sales here involved presents a direct, inescapable conflict with federal regulation by the Federal Power Commission. Two masters cannot rule the same house. Either the Federal Power Commission must obey the state orders, in which case its authority is limited in a manner contrary to the Act, or it need not do so, in which case the state's order is a nullity. This Court has already held that the power to fix rates for sales of gas in interstate commerce for resale "has been entrusted solely to the Federal Power Commission." *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456, 468. That, certainly, has been the view of the federal courts generally. *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690 (8th Cir.). And the same opinion, we submit, is implicit in this Court's decision in the *Phillips* case.

II.

OKLAHOMA'S MINIMUM PRICE ORDERS ARE INVALID UNDER THE COMMERCE CLAUSE EVEN APART FROM THEIR CONFLICT WITH THE NATURAL GAS ACT.

The foregoing discussion involving the conflict of Oklahoma's minimum price regulations with the Natural Gas Act assumes that, in the absence of the Act, the state could impose its minimum price regulations on the interstate

[8] Appellees' emphasis on the fact that the asserted state interest is "conservation" assumes that the state's power under that head is greater than, for example, a state's power to protect its citizens by public utility regulation. That this assumption is unwarranted, particularly when the chief element of "conservation" is economic benefit to local citizens, is clear from this court's decisions. Cf. *Freeman* v. *Hewitt*, 329 U. S. 249, 252, 257. Here, the findings as to "conservation" constitute merely a pretext for price fixing.

sales here involved. It is appellant's position, however, that, quite apart from the Natural Gas Act, the state orders here involved would in any event contravene the Commerce Clause and are invalid.

Appellees in No. 321 go to some lengths to attempt to justify the 9.8262 cent order on the basis that the increase from 7 cents was necessary to effectuate the conservation policies of the State. Appellant does not here contend that the state commission's conclusions do not represent a permissible legislative judgment measured by standards of due process. But since the state's interest must be measured beside that of the nation where interstate commerce is involved, the Court will examine for itself the record in No. 321 to ascertain the true nature of Oklahoma's asserted interest in "conservation".

The record shows that the Oklahoma commission's version of waste prevention has very little to do with physical waste of gas, protection of correlative rights and other traditional conservation measures. Instead, the commission was almost entirely concerned with what it calls "economic waste," which is nothing more than a conclusion that local producers and royalty owners are not being paid enough for their gas. Both witnesses who testified regarding conservation spent all but a fraction of their time on "economic waste."[9] The only testimony concerning physical waste is that "small quantities" of gas are wasted in cleaning out gas wells, part of which might be prevented by a different, more expensive method of operation. (321 R. 26-27.) There is no evidence whatever that the increased price fixed by the

[9] Witness Bailey's direct testimony on "economic waste" (comparative value of fuels) extends from page 12 to page 26 of the record in No. 321 and embraced 10 exhibits. His direct testimony on physical waste is at pp. 26-27 and on correlative rights at pp. 27-28. Witness Biddison's direct testimony on "economic waste" extends from page 53 to page 57 and on correlative rights from page 57 to page 58.

order will have any effect whatever on physical conservation of gas.

The testimony concerning protection of correlative rights is similarly vague and inconclusive. It was, simply, that higher prices would "have a tendency" to fuller development of the field and "tend" to produce revenue to mineral owners in fringe areas of the field. (321 R. 57-58.) No attempt was made to relate any particular price to the development of any additional wells.

Aside from the question of "economic waste," therefore, the evidence in support of the state's interest in conservation is negligible. And since "economic waste," as used by the State of Oklahoma, involves essentially a comparison of the cost of natural gas and other fuels in the consuming markets of the nation, a strong national interest is directly and immediately involved in Oklahoma's action.

Appellees' arguments with respect to the State's power, under the Commerce Clause, to fix minimum prices boil down to two: (1) that *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U. S. 179, is authority for the state's action,[10] and (2) that the regulation involved is a regulation of production, not of a sale in interstate commerce.

A. The Cities Service Case Is Not Authority for the Orders Here Involved.

Appelees in both cases place most of their reliance in the *Cities Service* case. In doing so, they forget this Court's admonition "that especially in this field opinions must be read in the setting of the particular cases and as the product of preoccupation with their special facts."

[10] Appellees of course recognize that the question of the effect of the Natural Gas Act upon Oklahoma's minimum price regulations was expressly reserved in the *Cities Service* decision.

Freeman v. *Hewitt*, 329 U. S. 249, 252. The Court had before it in the *Cities Service* case the question whether a state could fix a minimum price for raw natural gas sold at the wellhead, prior to gathering, processing and shipment in interstate commerce. Appellees seem to contend that because at the time of the *Cities Service* case the court presumably knew that some sales were not made at the wellhead but only after completion of gathering and processing, the Court must have intended to uphold the order with respect to those sales as well.

But this argument ignores the fact that this Court only decides "cases and controversies," not abstract questions of law. It decided in the *Cities Service* case that when sales were made at the wellhead, under the circumstances there involved, the state's order was valid. It did not decide any further or broader question because the case presented no further or broader controversy. The fact is emphasized by the Court's reservation of the Commerce Clause question in the companion case, *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190, where sales away from the wellhead *were* involved but the Commerce Clause question had not been raised.

Appellees' contention is, in last analysis, that there is no distinction so far as the Commerce Clause is concerned between a sale of raw gas at the wellhead, concomitant to production and prior to gathering and processing, and a sale of the residue constituent at the mouth of an interstate pipeline after all of those events have occurred and the processed gas has been taken aboard the interstate carrier. Appellees assert that the interstate movement begins at least as far back as the production stage, and even perhaps in the underground formations. They therefore ask the rhetorical question why, if a state may regulate at the production stage, it may not do so at the mouth of the interstate pipeline.

A similar issue was raised in the field of taxation of interstate commerce in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157. There, Texas attempted to justify a tax on the "taking" of gas by a pipeline company at the outlet of a gasoline plant (the point of sale) on the basis of cases upholding state taxation of the production of commodities for interstate commerce.[11] But this Court, speaking through Mr. Justice Clark, who also wrote the Court's opinion in the *Cities Service* case, rejected the contention, pointing out that

> "the State has delayed the incidence of the tax beyond the step where production and processing have ceased and transmission in interstate commerce has begun." 347 U. S. at 167.

As this Court has made clear, the state's local interest is greatest at the point of production. As the state attempts to tax or regulate activities farther removed from the production process and closer to actual transportation of the commodity in interstate commerce, the state's interest becomes less and the national interest greater. The state's power is, of course, at its lowest ebb when it attempts to regulate interstate transportation itself or to project its regulation into another state. *Cf. Buck* v. *Kuykendall*, 267 U. S. 307; *Baldwin* v. *Seelig*, 294 U. S. 511[12]. Thus, while the interstate movement may begin at the point of production, the state's interest by no means remains constant in all phases of that movement.

The *Cities Service* case was concerned with regulation at the point of production—the situation in which the state's interest is most obvious. *Parker* v. *Brown*, 317 U. S.

[11] *E.g. Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 170; *Hope Natural Gas Co.* v. *Hall*, 274 U. S. 284.

[12] Oklahoma has, in fact, reached this stage by attempting to regulate the price at which Phillips sells Oklahoma-produced gas to Michigan-Wisconsin Pipe Line Co. *in Texas*. (321 R. 143.)

341, the case principally relied upon, was of exactly that character. The Court did not, therefore, even feel it necessary to discuss such cases as *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189 and the *Attleboro* case, which involved state regulation at the commencement of interstate transportation.

It is not appellant's position that the fact that the transaction which the state attempts to regulate is closely related in time and distance to interstate movement automatically tips the scales against state regulation. If only a small proportion of the commerce affected by the regulation is interstate, the local interest involved may yet outweigh the national interest in the free flow of commerce. *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346.

But here, as in the *Lemke* and *Shafer* cases, approximately 90% of the commodity regulated by the State is immediately shipped interstate. This was the precise basis upon which those cases were distinguished in the *Eisenberg* case, where only about 10% of the milk subject to the regulation was shipped interstate. As this Court there said:

> "Only a small fraction of the milk produced by farmers in Pennsylvania is shipped out of the Commonwealth. There is, therefore, a comparatively large field remotely affecting and wholly unrelated to interstate commerce within which the statute operates. These considerations we think justify the conclusion that the effect of the law on interstate commerce is incidental and not forbidden by the Constitution, in the absence of regulation by Congress." 306 U. S. at 353.

So far as the Commerce Clause question is concerned, appellant is entirely willing to have the issue judged by the standards of the *Eisenberg*, *Shafer* and *Lemke* cases. For,

judged by those standards, Oklahoma's attempt to fix the price of the sales here involved must fail.[13]

B. The Regulation Here Involved Is Not a Regulation of Production But of Price.

Appellees in both cases argue that the orders in question are not regulations of interstate sales but of production. It is said that the state has merely adopted a formula for the enforcement of the wellhead price and that, while stated in terms of a price at the conclusion of gathering and processing, the order is nevertheless simply a regulation of production.

There are several obvious answers to this contention. In the first place, the provision of the state orders prohibiting production unless a certain price is obtained for the gas is not the end or purpose of the regulation but merely the sanction imposed to enforce compliance with the minimum price requirement. There is no dispute about this fact. The state commission's first finding in No. 321 is:

> "1. That this is an application of certain mineral owners in Texas County, Oklahoma for an order *determining the minimum price at which gas in the Guymon Hugoton Field may be first purchased* or sold." (321 R. 133.)

While production is no doubt a local activity subject to a large measure of state control, it cannot be made the vehicle for the enforcement of state regulations of interstate commerce that are themselves beyond the state's power. If, for example, the State of Texas had framed its "gathering tax" statute to provide that no gas should be produced in the State unless, when sold at the outlet of a gasoline plant, the purchaser paid the gathering tax, the

[13] See also, *Hood* v. *Du Mond*, 336 U. S. 525, 571 (dissenting opinion).

result would hardly have been different. *Cf. Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 167.

Foster-Fountain Packing Co. v. *Haydel*, 278 U. S. 1 and *Toomer* v. *Witsell*, 334 U. S. 385, 403-406, are decisive in this regard. Both cases involved state laws requiring, *as a condition of engaging in the catching of shrimp*, that the persons engaged in that occupation comply with regulations that inhibited the subsequent interstate movement of the shrimp. There was no question that the states' interest in the shrimp was as great as Oklahoma's interest in natural gas.[14] But this Court held that the states could not, as a condition of production, impose restrictions violative of the Commerce Clause; that when a state sees fit to permit interstate commerce in its commodities, persons dealing in those commodities "are not bound to comply with, or estopped from objecting to the enforcement of, conditions that conflict with the Constitution of the United States." 278 U. S. at 13.

The theory that the fixing of a price for gas sold at the conclusion of gathering and processing is simply the application of a formula for relating that price back to the wellhead is subject to the same objection. The fact that the state may be able to fix a minimum price for wellhead sales, absent the Natural Gas Act, does not mean, in other words, that it may project its legislation into other states in an effort to control sales not made at the wellhead. *Cf. Baldwin* v. *Seelig*, 294 U. S. 511. To illustrate: Many pipeline companies produce some of their own gas. The first sale of that gas may be to a distribution company in Indiana or Ohio, or to an industrial consumer in Michigan. May Oklahoma, because it may set minimum prices for wellhead

[14] In fact, the shrimp were assumed to be wild game as to which the state may prohibit the interstate shipment, *Geer* v. *Connecticut*, 161 U. S. 519, whereas the state probably has no such power with respect to natural gas. *Pennsylvania* v. *West Virginia*, 262 U. S. 553.

sales, also regulate the price at which the pipeline company-producer sells gas to distribution companies or industrial consumers?[15] Merely calling a regulation of sales in interstate commerce a "relation back" to the wellhead does not change the essential nature of that regulation.

C. The Orders of the State Commission Discriminate Against Interstate Commerce.

Appellees in No. 321 take issue with appellant's contention that the State minimum price regulations are aimed at and discriminate against interstate commerce, in that the only field in which minimum prices have been prescribed is the Guymon-Hugoton field, where 89% of the gas is shipped interstate, while the other fields in Oklahoma, which ship less than 15% of their gas interstate, have been left unregulated. It is argued that there is no proof of conditions in the other fields or whether different conservation problems are raised by the production of casinghead gas from oil wells as against production of dry gas in a field such as Guymon-Hugoton.

This argument ignores what is common knowledge in the oil and gas industry, that price is a much more important consideration in preventing waste of gas produced in connection with oil than of gas produced alone. Appellee Phillips Petroleum Company stated to this Court in its brief in the *Phillips* case last term:

> "In no area is the relationship of price to conservation of gas more strikingly apparent than in the instance of casinghead gas, which is produced only as

[15] That was the situation in *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690 (8th Cir.), where the Court of Appeals denied the right of Kansas to require a pipeline company-producer to "attribute" a particular minimum wellhead price to sales subsequently made to distribution companies.

> and when oil is produced. Unless casinghead gas is gathered and marketed immediately, it is lost either by flaring or being allowed to escape. Billions of cubic feet have been so wasted. The extent to which the gas will be gathered and utilized relates most directly to the price for gas, for utilization of casinghead gas involves considerable expense * * *." (Brief of Phillips Petroleum Co. in No. 280, 1953 Term, p. 78.)

It is curious indeed that in the fields in which "the relationship of price to conservation [is most] strikingly apparent" the state commission has not seen fit to adopt minimum price regulations but has chosen, instead, to impose such regulations on the one field in which there is almost no physical waste. (321 R. 95, 27.) Moreover, appellees' implication that there may be differences between the different producing fields fails to take account of the fact that most of the considerations relied upon by the state commission would not vary in any event. Economic waste, based upon a comparison of the price of gas with the prices of other fuels, loss to royalty owners and loss to the state in taxes are the same whatever the physical characteristics of the field.

Finally, the fact that Oklahoma's minimum price regulations are aimed at interstate commerce is apparent in the state commission's preoccupation with "economic waste." When the principal basis of the orders is testimony that natural gas is selling for less than other fuels in interstate markets, the order is necessarily designed to raise those prices. When, at the same time, the effect upon Oklahoma markets is negligible, discrimination against interstate commerce is apparent.[16]

[16] Appellee's claim that this issue is not properly before this Court is without substance. Appellant has at all times contended that the state commission's orders violate the Commerce Clause and has argued, as a part of that contention, that a discrimination against interstate commerce is undoubtedly a burden on such

III.

THE STATE COMMISSION'S ORDER IN NO. 191 VIOLATES THE PRINCIPLES OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Appellees in No. 191 defend the state commission's order directing Natural to pay Panoma 7 cents per Mcf. for residue gas while, at the same time, approving the payment by Panhandle Eastern to Phillips of slightly more than half that amount.[17] They say (Br. 191, p. 30):

> "There can be no denial of equal protection if all parties are governed by the same rule. The rule prohibiting denial of equal protection may be invoked only upon satisfactory proof by pertinent evidence of different practices upon like but different sales."

We agree. Measured by that test, the state commission's order in No. 191, holding that Natural must pay 7 cents for residue gas alone cannot be reconciled with the commission's earlier order finding that Phillips was complying with the regulations by obtaining approximately 7 cents for *both* the liquid and residue constituents of its gas. Obviously, all parties were not "governed by the same rule." Indeed, the state commission admitted as much when, in its order, it stated with respect to its action in the case of Phillips: "* * * this Commission does not feel it is bound herein by any determination of facts or any order entered therein; * * *." (191 R. 85.)

commerce. This Court's rules (Rule 10) provide that "The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein." It seems obvious that discrimination against interstate commerce is a "subsidiary question fairly comprised" within the contention that the orders violate the Commerce Clause. (321 R. 200-201.)

[17] By inadvertence appellant stated at page 36 of its opening brief that Phillips was receiving 4.67 cents per Mcf for its residue gas. Its actual receipt was 4.17 cents on the pressure base fixed in the order.

CONCLUSION.

The state commission's orders in Nos. 191 and 321 cannot be reconciled with the jurisdiction of the Federal Power Commission over the same sales under the Natural Gas Act. Moreover, even apart from the Natural Gas Act, the state's orders would constitute an unlawful regulation of interstate commerce. Finally, the state commission's order in No. 191 violates long established principles of equal protection of the laws. The judgments of the Supreme Court of Oklahoma sustaining the state commission's orders should accordingly be reversed.

Respectfully submitted,

CLARENCE H. ROSS,
DOUGLAS F. SMITH,
D. H. CULTON,
COLEMAN HAYES,
CHARLES C. MCDUGALD,
WARREN T. SPIES,
ARTHUR R. SEDER, JR.,
Attorneys for Appellant.

11 South La Salle Street,
Chicago 3, Illinois.

APPENDIX A.

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners:

Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

In the Matter of
Dorchester Corporation. }

ORDER ALLOWING RATE SCHEDULE AND SUPPLEMENTS TO TAKE EFFECT.

Dorchester Corporation (Dorchester), on October 28, 1954, tendered for filing, pursuant to Order No. 174-A issued August 6, 1954, in Docket No. R-138, the basic contract and certain supplements providing for the sale in interstate commerce to Natural Gas Pipeline Company of America (Natural) of natural gas produced in Guymon-Hugoton Field, Texas County, Oklahoma. The tendered filings have been respectively designated as Dorchester Corporation FPC Gas Rate Schedule No. 2, and Supplements Nos. 1 through 3 thereto.

Gas Rate Schedule No. 2 is a contract dated December 1, 1946, between Harrington & Marsh, a predecessor of Dorchester, and Natural, providing a price of 7¢ per Mcf at 16.4 psia for gas purchased by Natural under the basic contract. Supplement No. 1 thereto is a letter dated February 25, 1948, from Natural to Harrington & Marsh agree-

ing to a modification of the basic contract. Supplement No. 2 is an amendment dated October 1, 1949, between Natural and Panoma Corporation (Panoma) of the basic contract. Panoma is also a predecessor of Dorchester, having succeeded to the rights of Harrington & Marsh. Neither supplement, however, altered the basic contract price for natural gas.

Supplement No. 3 is a copy of Order No. 26096 of the Corporation Commission of the State of Oklahoma entered July 29, 1952, in its Cause CD No. 3628 fixing a minimum price of 9.8262¢ per Mcf at the wellhead at a pressure of 14.65 psia for gas produced from any well located in Guymon-Hugoton Field. Such order of the Corporation Commission of the State of Oklahoma applies to all gas produced in Guymon-Hugoton Field, Texas County, Oklahoma, including residue gas purchased by Natural at the outlet of a gasoline plant operated by Dorchester. On the basis of such order, Dorchester claims that the effective price to Natural as of June 7, 1954, is 9.8262¢ per Mcf at 14.65 psia.

Natural, on November 10, 1954, by telegraphic advice protested Dorchester's filing of the minimum price order, stating in part:

> "Natural denies that such order of the Corporation Commission of Oklahoma is valid as to its purchases of residue gas from Dorchester at the outlet of that company's gasoline plant and denies that the same constitutes an amendment of its said contract with Dorchester Corporation within the meaning of Order No. 174-A of your Commission. To the contrary Natural alleges that on June 7, 1954, the contract price and the legal price as contemplated by Order 174-A was seven cents per Mcf measured on a 16.4 pound pressure base as provided under Section 6 of such contract, and that it has never paid the price prescribed by said Order 26096 save under compulsion and duress of said order

and with written protest and full reservation of its right to recover payment in excess of the price provided in Section 6 of the contract. Natural further alleges that the validity of such Order 26096 as applied to the sales of gas to Natural is the subject matter of an appeal to the Supreme Court of the United States in Cause No. 321, October Term 1954, and that on November 8, 1954, that Court noted its probable jurisdiction in the cause."

Natural requests that the Commission reject the filing of Supplement No. 3 as a part of Dorchester's tariff or, in the alternative and in the event the Commission shall accept Supplement No. 3 for filing, that the Commission accept such supplement solely on condition that Dorchester be required to hold in separate fund any payments made by Natural in excess of the price of 7¢ per Mcf at 16.4 psia provided in Section 6 of the Rate Schedule No. 2, subject to refund in the event it shall be ruled by the Supreme Court of the United States that Order No. 26096 is not validly imposed in respect to the purchase of gas by Natural from Dorchester.

The natural gas sold by Dorchester to Natural pursuant to the foregoing rate schedule and supplements thereto is transported and sold in interstate commerce for resale for ultimate public compensation. Accordingly, such sale and rate schedule and supplements governing such sale are subject to the jurisdiction of the Commission.

In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.

To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise.

The Commission *finds:*

(1) Dorchester Corporation is a "natural-gas company" within the meaning of the Natural Gas Act, and its sale of gas to Natural Gas Pipeline Company of America under FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto is a sale of gas for resale for ultimate public consumption.

(2) FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto filed by Dorchester Coropration on October 28, 1954, should be accepted for filing, subject to the condition specified herein.

The Commission *orders:*

(A) FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto filed by Dorchester Corporation on October 28, 1954, be and the same are hereby accepted for filing subject to the express condition specified in (B) hereof.

(B) The acceptance for filing of the aforesaid rate schedule and supplements thereto is subject to the express condition that such filing is without prejudice to any claims or contentions which have been made by or for Dorchester Corporation or by Natural Gas Pipeline Company of America in the litigation pending before the Supreme Court of the United States in Cause No. 321, October Term 1954.

(C) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7(c) of the Natural Gas Act; nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regu-

lation, contract, or practice affecting such service or rate, nor shall this be deemed as recognition of any contractual right or obligation affecting or relating to such service or rate.

(D) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted, by or against Dorchester Corporation.

By the Commission.

LEON M. FUQUAY,
Secretary.

Adopted: November 24, 1954.

Issued: November 30, 1954.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
JUL 6 1954
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

v.

PANOMA CORPORATION, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

T. MURRAY ROBINSON,
LEON SHIPP,
Counsel for Panoma Corporation,

FLOYD GREEN,
Conservation Attorney,

MAC Q. WILLIAMSON,
Attorney General of Oklahoma,
Counsel for Corporation Commission of the State of Oklahoma,
Counsel for Appellees.

INDEX

Subject Index

	Page
Statement opposing jurisdiction and motion to dismiss or affirm	1

Table of Cases Cited

Cities Service Gas Co. v. *Peerless Oil & Gas Co., et al.*, 203 Okl. 35, 220 P.(2d) 279	2
Cities Service Gas Co. v. *Peerless Oil & Gas Co., et al.*, 340 U.S. 179	2, 3
Federal Power Commission v. *Hope Natural Gas Co.*, 320 U.S. 591	11
Federal Power Commission v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498	9
Interstate Natural Gas Co. v. *Federal Power Commission*, 331 U.S. 682	10
Michigan-Wisconsin Pipe Line Co. v. *Calvert*, 74 S.Ct. 396	12
Minneapolis, St. Paul & S.M.R. Co. v. *C. L. Merrick Co.*, 254 U.S. 376	4
Phillips Petroleum Co. v. *State of Oklahoma*, 340 U.S. 190	6
Phillips Petroleum Co. v. *State of Wisconsin*, 74 S.Ct. 795	12
Southwestern Bell Tel. Co. v. *State of Oklahoma*, 303 U.S. 206	2

Authorities Cited

Orders of the State Corporation Commission of Oklahoma:	
No. 19514	2, 3, 6, 8
No. 19515	2
No. 19702	6
No. 24745	5

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

v.

PANOMA CORPORATION, ET AL.
Appellees

APPEAL FROM THE SUPREME COURT OF OKLAHOMA

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM IN ACCORDANCE WITH THE PROVISICNS OF RULE 12, PARAGRAPH 3 OF THE SUPREME COURT OF THE UNITED STATES, AS AMENDED

Leave is hereby granted to file this 30th day of June, 1954.

HARRY L. S. HALLEY,
Chief Justice.

Come now appellees and file their statement in opposition to appellant's statement as to jurisdiction, and hereby move the court to dismiss the appeal herein, or to affirm the decision and judgment of the Supreme Court of the

State of Oklahoma from which decision and judgment said appeal is taken.

I

The opinion of the Supreme Court of Oklahoma, attached to appellant's statement as appendix A, affirmatively discloses that previously the State Corporation Commission of the State of Oklahoma by its orders numbered 19514 and 19515 fixed the minimum price of gas at 7¢ per thousand cubic feet at the wellhead for all natural gas taken from the producing structures or formations of the field involved. That these orders were upheld by the Supreme Court of Oklahoma and by the Supreme Court of the United States in 1950, *Cities Service Gas Co.* v. *Peerless Oil & Gas Co. et al.*, 203 Okl. 35, 220 P. 2d 279; *Cities Service Gas Co.* v. *Peerless Oil & Gas Co. et al.*, 340 U. S. 179, and that thus since the effective date of the orders, that is, January, 1947, no one could legally take natural gas from the field at a price less than 7¢ at the wellhead.

The opinion affirmatively discloses that the contract between Natural and Panoma, although executed prior to the date of the Commission's order, was specifically subject to the lawful orders of all regulatory bodies having jurisdiction of the parties.

The opinion further discloses that there was not decided, nor was it necessary to decide any federal question in the consideration of the cause other than a proper enforcement of the order of the State Corporation Commission in accordance with the opinion of the Supreme Court of the United States in affirming the order by its decision in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co., supra.*

In *Southwestern Bell Tel. Co.* v. *State of Oklahoma*, 303 U. S. 206, in a per curiam opinion, it is said:

> "We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a

court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure* v. *Gaillard*, 127 U. S. 216, 234, 8 S. Ct. 1053, 32 L. Ed. 125; *Johnson* v. *Risk*, 137 U. S. 300, 306, 307, 11 S. Ct. 111, 34 L. Ed. 683; *Wood Mowing & Reaping Machine Co.* v. *Skinner*, 139 U. S. 293, 295, 297, S. Ct. 528, 35 L. Ed. 193; *Whitney* v. *California*, 274 U. S. 357, 360, 361, 47 S. Ct. 641, 642, 643, 71 L. Ed. 1095; *Lynch* v. *New York*, 293 U. S. 52, 54, 55 S. Ct. 16, 17, 79 L. Ed. 191."

The validity of Order No. 19514 of the Corporation Commission of the State of Oklahoma, referred to by appellant as the basic order, is not involved in this appeal. In the opinion sustaining that order and affirming the Supreme Court of the State of Oklahoma and the Corporation Commission of the State of Oklahoma in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, Mr. Justice Clark said:

"* * * The Oklahoma Supreme Court construed the 1915 Act to permit the general order setting a minimum price in the field. It further rules that economic waste was within the contemplation of the statute. Finally, with regard to state questions, it held that the orders did not violate the Oklahoma Constitution.

"The Oklahoma court also concluded that the statutes so construed and the orders made thereunder do not violate the Federal Constitution on the grounds relied on by Cities Service. We agree.

"The Due Process and Equal Protection issues raised by appellant are virtually without substance. It is now undeniable that a state may adopt reasonable reg-

ulations to prevent economic and physical waste of natural gas. * * *

"* * * It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. (Citing cases) The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. * * *

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation * * *

"* * * Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. * * *

"We hold that on this record the Oklahoma Corporation Commission issued valid orders, and that the decision of the court below should be affirmed."

It has been conclusively settled by the United States Supreme Court, and is no longer open for review by this court.

Minneapolis, St. Paul & S. M. R. Co. v. *C. L. Merrick Co.*, 254 U. S. 376.

II

This appeal is concerned only with the validity of Order No. 24745 of the Corporation Commission of the State of Oklahoma attached to appellant's statement as appendix D, and is as follows:

> "It is therefore ordered by the Corporation Commission of Oklahoma as follows:
>
> "1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with Order No. 19514 by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.
>
> "2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base 16.5 pounds per square inch absolute pressure, and it is directed to desist from so doing and is directed to comply with said order.
>
> "3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 16.5 pounds absolute per square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America."

The enforcement provisions are directed to Panoma. It is in the nature of a citation after final judgment for the enforcement of Order No. 19514 and for noncompliance required Panoma to stop delivery of gas to Natural.

In its statement appellant attempts to compare the effect of the enforcement of the basic order as against Phillips Petroleum Company and the effect of the enforcement of the basic order as against Panoma by showing the net receipts for gas produced by Phillips and the net receipts from gas produced by Panoma.

The enforcement provisions of the basic order as applied to Phillips are not within the record of this appeal and may not be considered herein. As shown by this court's opinion in the consideration of Order No. 19702 of the Corporation Commission of the State of Oklahoma in *Phillips Petroleum Company* v. *State of Oklahoma*, 340 U. S. 190, it was found that Phillips was complying with the basic order. Phillips therein contended that it was not a purchaser but merely a producer, and that unlike the situation in Cities Service, the order as applied to it lacks any connection with the correlative rights, the interest of the public, monopolistic practices or discrimination. This court said:

> "* * * The distinction is without a difference: the connection between realized price and conservation applies to all production in the field, whether owners purchase from others or not, and whether they own pipe lines or not. In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any."

Contrary to the contention of appellants, the Corporation made no finding that the sales contract between Panoma and its purchasers was substantially identical with the contract between Phillips and its purchasers, nor did the

Commission make a finding as to the aggregate receipts by either Panoma or Phillips from the sale of gas.

Paragraph 10 of the Commission's order, (shown as appendix D attached to appellant's statement) is as follows:

> "The Commission further finds that Order No. 19702, entered upon the application of Phillips Petroleum Company, was not entered as a fieldwide order, but was entered as affecting a part thereof only and on the application of an owner of a portion of the wells in the field, and was based on facts presented to the Commission in support of the special relief or exception which the applicant in that case had requested; that therein the Commission specifically found that applicant 'did not see fit to introduce any evidence as to profit or losses from the production of natural gas from the Guymon-Hugoton Field'; that this Commission does not feel it is bound herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19702; however since respondent's contention that such order is in conflict with the findings and judgment of the Commission herein, this Commission deems it appropriate to now find that when it entered its Order No. 19514 determining:
>
> > 'That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch',
>
> that it applied to all producers, purchasers and takers of gas from said field, and that no sales or purchases of natural gas would be thereafter permitted in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch; that the minimum price thus established would govern at the well-

> head and at any other point in said Guymon-Hugoton field at which said gas would thereafter be delivered by a producer to a purchaser, so that the owners of the gas within said reservoir, being the lessees and the lessors, and other persons owning an interest in the gas in place, would at all times from and after the issuance of said order, receive from the delivery of their gas, as owners and producers thereof, not less than the minimum price fixed by the Commission."

The order appealed from makes no reference to any sum of money so paid by Natural to Panoma. It simply requires payment of the minimum price of gas from and after the effective date of basic order No. 19514.

The Due Process clause in the Constitution has no application whatsoever. Ample opportunity is afforded for a judicial review of the orders of the Oklahoma State Corporation Commission. As said in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co., supra,* the Due Process and Equal Protection issues raised by appellant are virtually without substance.

Panoma receives no windfall. It receives exactly what the Commission's order provides or shuts in its wells. This question was foreclosed by *Cities Service Gas Co.* v. *Peerless Oil & Gas Co., supra,* wherein it is said:

> "The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a statewide interest in conservation."

The Commerce Clause does not prevent or restrict the state from regulating the production of gas to prevent waste and conserve the natural resources. The Natural Gas Act was created for the purpose of filling a void in the usual and customary regulations. Interstate pipeline companies

were successful in obtaining court decisions holding that certain of their activities, by reason of the Commerce Clause, were beyond state regulation, and since no federal regulation existed, they were free to act as they chose. Mr. Justice Reed in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, makes these statements:

> "Without entering upon another review of its legislative history, suffice it to say that the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limit of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies."

And in the same opinion:

> "Before the Colorado Interstate decision, it was apparent that the value of producing facilities and the cost of gas bought by a natural-gas company from producers would be weighty factors in rate making whether a rate-base method or other method for fixing rates was used. Low valuation by the Commission of producing properties or low-cost allowance for purchased gas discourages exploration for gas or its sale in interstate commerce. Congress knew this necessary relationship between production and distribution but excluded the Commission from exercising any direct control or regulation over the actual production and gathering of natural gas."

And in answer to the argument that since natural gas is the life blood of a pipeline system, a company by disposing of its gas reserves, unhampered by Commission control, may render itself unable to continue service, and consequently

abandon its facilities and services without the consent of the Commission, this Court in the same opinion said:

> "The argument begs the question. The section, like those above, covers only 'facilities subject to the jurisdiction of the Commission.'
>
> "To accept these arguments springing from power to allow interstate service, fix rates, and control abandonment would establish wide control by the Federal Power Commission over the production and gathering of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress. The Legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution, national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views."

In *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, Mr. Chief Justice Vinson said:

> "Thus the House Committee Report states: 'The bill takes no authority from State Commissions, and is so drawn as to complement and in no manner usurp State regulatory authority. * * *' Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of

natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach."

In *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, Mr. Justice Douglas, speaking for the court, said:

"We do not mean to suggest that Congress was unmindful of the interests of the producing states in their natural gas supplies when it drafted the Natural Gas Act. As we have said, the Act does not intrude on the domain traditionally reserved for control by state commissions; and the Federal Power Commission was given no authority over 'the production or gathering of natural gas.' Sec. 1(b). In addition, Congress recognized the legitimate interests of the States in the conservation of natural gas. By Sec. 11 Congress instructed the Commission to make reports on compacts between two or more States dealing with the conservation, production and transportation of natural gas. The Commission was also directed to recommend further legislation appropriate or necessary to carry out any proposed compact and 'to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.' Sec. 11(a) Thus Congress was quite aware of the interests of the producing states in their natural gas supplies. But it left the protection of those interests to measures other than the maintenance of high rates to private companies."

Appellant contends that this line of authorities was superseded by this court's decisions in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 74 S. Ct. Rep. 396 and *Phillips Petroleum Company* v. *State of Wisconsin*, 74 S. Ct. Rep. 795. Not so. *Michigan-Wisconsin Pipe Line Company* v. *Calvert* was concerned with a state tax applied to an interstate natural gas pipe line company engaged in interstate commerce. *Phillips Petroleum Company* v. *State of Wisconsin* was concerned with whether or not Phillips Petroleum Company is a natural gas company within the jurisdiction of the Federal Power Commission. In that opinion Mr. Justice Minton, speaking for the court, said:

> "There can be no dispute that the overriding congressional purpose was to plug the 'gap' in regulation of natural-gas companies resulting from judicial decisions prohibiting on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that 'the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional powers of the States.' Interstate Natural Gas Co. v. Federal Power Commission, supra, 331 U. S. at page 689, 67 S. Ct. at page 1487. The committee reports on the bill that because the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them. Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission system.
>
> "Petitioners cite our recent decisions in Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179, 71 S. Ct. 215, 95 L. Ed. 190, and Phillips Petroleum Co. v. State of Oklahoma, 340 U. S. 190, 71 S. Ct. 221, 95 L. Ed. 204, as authority for the proposition that the states may regulate the sales in question here and, hence, that such sales are not within the gap which the

> Natural Gas Act was intended to fill. Those cases upheld as constitutional state minimum price orders, justified as conservation measures, applying to sales of natural gas in interstate commerce. But it is well settled that the gap referred to is that thought to exist at the time the Natural Gas Act was passed, and the jurisdiction of the Commission is not affected by subsequent decisions of this Court which have somewhat loosened the constitutional restrictions on state activities affecting interstate commerce, in the absence of conflicting federal regulation."

The emphasis on the word "minimum" is the court's. The Federal Power Commission has in no wise attempted to regulate the production and gathering of natural gas. As seen by the decisions of this court, supra, such is beyond the jurisdiction of the Federal Power Commission.

The decisions make it clearly apparent that we have two types of regulation, each covering its separate field. First, state regulation covering the production and gathering of natural gas. This is done tc effect conservation and to eliminate waste; fixing minimum prices is within this power left to the states.

Second, regulation of the transportation and sale of natural gas, including its sale price to consumers throughout the United States is within the province and jurisdiction of the Federal Power Commission.

The Commerce Clause of the Constitution does not prohibit the state regulation of its gas fields in so far as the regulations cover the production of gas.

IV

Appellees contend that the record in this case discloses no substantial federal question, and therefore this court is without jurisdiction of this cause. It is therefore submitted that appellees' motion herein to dismiss the appeal

or affirm the judgment of the Supreme Court of Oklahoma should be granted.

WHEREFORE, appellees pray that this court refuse to note jurisdiction in this cause and that appellees' motion to dismiss the appeal or affirm the judgment be granted.

Respectfully submitted,

T. MURRAY ROBINSON,
LEON SHIPP,
Attorneys for Panoma Corporation, Appellee.

FLOYD GREEN,
Conservation Attorney.

MAC Q. WILLIAMSON,
Attorney General of the State of Oklahoma.
Attorneys for the Corporation Commission of the State of Oklahoma, Appellee.

(7068)

Office - Supreme Court, U. S.
FILED
MAR 10 1955
HAROLD B. WILLEY, Clerk

LIBRARY
SUPREME COURT, U.S.

In The
Supreme Court of the United States

OCTOBER TERM 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

VERSUS

PANOMA CORPORATION, and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,
Appellees.

BRIEF OF APPELLEES

FLOYD GREEN,
T. MURRAY ROBINSON,
LEON SHIPP,
Attorneys for Appellees.

930 Hightower Building,
Oklahoma City, Oklahoma.

KING LAW BRIEF CO., 222 N.W. THIRD, OKLAHOMA CITY — PHONE FO 5-2969

INDEX

PAGE

Foreword 1

Authority:

Cities Service Gas Co. v. Peerless Oil & Gas Co., 203 Okl. 35, 220 P. 2d 279 2

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179 2

Natural Gas Pipeline Co. of America v. Panoma Corporation, 271 P. 2d 354 2

Natural Gas Pipeline Co. v. Corporation Commission, 272 P. 2d 425 3

Statutes Involved 4

Authority:

Title 28 U. S. C., Section 1257 (2) 4

Commission Order No. 19514 4

Commission Order No. 24745 4

Article 1, Sec. 8, Cl. 3, Commerce Clause of the Federal Constitution 4

Fourteenth Amendment to the Constitution 4

15 U. S. C. 717, et seq., Natural Gas Act 4

Questions Presented:

1. Whether or not a judicial determination that certain companies operating in the Guymon-Hugoton gas field are natural gas companies, and as such, subject to the jurisdiction of the Federal Power Commission, destroys a prior state order fixing the minimum price at which natural gas may be produced.

PAGE

2. Whether or not the orders of the Commission enforcing the minimum price regulation as approved by this Court violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States 4

Statement of the Case 4

The Application 4

The Response 5

The Commission's Order 8

The Evidence before the Commission 9

Natural's Position 13

Summary of the Argument 14

Authority:

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179, 181 14

Argument and Authorities 15

I. The determination that certain companies operating in the field are natural gas companies subject to the jurisdiction of the Federal Power Commission does not destroy state regulation of the production of natural gas 15

Authority:

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179 15, 16, 17, 20, 24

Nebbia v. People of the State of New York, 291 U. S. 502, 516 22, 23

Phillips Petroleum Co. v. Oklahoma, 340 U. S. 192 21

Phillips Petroleum Co. v. Wisconsin (1954), 347 U. S. 672 24, 26

Snowden v. Hughes, 321 U. S. 1, 8, 9, 10, 11 22

PAGE

Article I. Section 8. Constitution (Commerce Clause) 16

52 Stat. 821, 15 U. S. C., Sec. 717 (b) (Natural Gas Act) 19

II. The Commission's Order of Enforcement was made in accord with the evidence presented and does not violate the equal protection clause of the Fourteenth Amendment 26

Authority:

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179 32

Keller v. Potomac Electric Power Co., 261 U. S. 445 29

Nebbia v. People of the State of New York, 291 U. S. 502 31

Phillips Petroleum Co. v. State, 340 U. S. 190, 192 ..... 27, 32, 33

Raliway Express Agency, Inc. v. New York, 336 U. S. 106, 109 30

Snowden v. Hughes, 321 U. S. 1, 8, 9, 11, 12 31

Conclusion 33

In The
Supreme Court of the United States

OCTOBER TERM 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

VERSUS

PANOMA CORPORATION, and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,
Appellees.

BRIEF OF APPELLEES

FOREWORD

Herein the appellant, Natural Gas Pipeline Company of America will be referred to as "Natural"; the Corporation Commission of the State of Oklahoma will be referred to as "Commission", and Panoma Corporation will be referred to as "Panoma".

In December of 1946, the Corporation Commission of Oklahoma entered its Order number 19514, directing that no natural gas be taken from the Guymon-Hugoton Field at less than 7¢ per thousand cubic feet. Cities Service Gas Company appealed the order to the Supreme Court of Oklahoma. From a decision affirming[1], an appeal was taken to this Court, where it was again held valid[2]. Thereafter, Panoma, as a gas producer in the subject field, filed an application with the Commission seeking the Commission's conclusion as to whether or not the sale of natural gas to Natural, under the terms of the contract between the two companies complied with or violated Order number 19514.

In May of 1951, the Commission issued its Order number 24745 (R. 81), determining that under the facts proven, Panoma was not complying with the basic order. This cause involves an appeal from the Supreme Court of Oklahoma affirming that order of interpretation and enforcement[3]. The only parties hereto are Natural, Panoma and the Commission.

In July of 1952 (more than six years after the first such order), on the application of about five hun-

---

[1] Cities Service Gas Co. v. Peerless Oil and Gas Co., 203 Okl. 35, 220 P. 2d 279.

[2] Cities Service Gas Co. v. Peerless Oil and Gas Co., 340 U. S. 179.

[3] Natural Gas Pipeline Co. of America v. Panoma Corporation, 271 P. 2d 354.

dred land and mineral owners in Texas County, the Commission issued its Order number 29096 raising the minimum value of gas taken from the Guymon-Hugoton field from 7¢ to 9.8262¢ per thousand cubic feet and prescribing a more definite formula to use in determining the question of whether or not such value had been realized.

An appeal was taken from that Order to the Supreme Court of Oklahoma by three of the pipe line companies purchasing gas in that field, one of which was Natural. From an adverse judgment by the Supreme Court of Oklahoma[4], all of the pipe line companies have appealed to this Court. Cause No. 321 is Natural's appeal involving the Commission's order increasing the minimum price for produced gas.

Appellant has elected to brief this appeal jointly with the appeal taken in Cause No. 321, in part supporting their contentions in each cause by reference to the record in the other. Since the Commission's orders involved are different orders, are based on different evidence and affect different parties represented by different counsel, the appellees have elected to brief this appeal separately.

---

[4] Natural Gas Pipeline Co. v. Corporation Commission, 272 P. 2d 425

STATUTES INVOLVED

The state statutes in question, as that term is defined by Title 28 U. S. C., Section 1257 (2), are Commission's Orders number 19514 (R. 127), and number 24745 (R. 81). Appellant advances in support of its argument Art. 1, Sec. 8, Cl. 3, th Commerce Clause of the Federal Constitution, the Equal Protection Clause of the Fourteenth Amendment, and the Natural Gas Act (15 U. S. C. 717, *et seq.*).

QUESTIONS PRESENTED

1. Whether or not a judicial determination that certain companies operating in the Guymon Hugoton gas field are natural gas companies, and as such, subject to the jurisdiction of the Federal Power Commission, destroys a prior state order fixing the minimum price at which natural gas may be produced.

2. Whether or not the orders of the Commission enforcing the minimum price regulation as approved by this court violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

THE APPLICATION

These proceedings were commenced by the filing with the Commission of an application by Panoma (R. 11-12), showing:

1. That it owned producing gas wells within the common source of supply covered by a previous order of the Commission fixing a minimum field price for gas produced at 7¢ per thousand cubic feet, metered at 14.65 pound absolute pressure per square inch.

2. That Natural, since the effective date of the order entered on the 9th day of December, 1946, has continued to receive gas from the applicant and has paid therefor a sum less than the price fixed by the Commission's order.

3. That notwithstanding the fact that the order is applicable to said gas, Natural had refused to make payment therefor in accordance with the terms of said order.

4. That Panoma did not desire to continue to deliver its gas in violation of the order, and requested the Commission to determine: First, whether or not its deliveries are in violation of the order; and Second, whether or not it should discontinue such deliveries if the same are in violation of the order.

Notice was given and the application set for hearing on the 14th of February, 1951 (R. 12-13).

THE RESPONSE

Thereafter, Natural filed its response (R. 16), alleging:

1. That it was a natural gas company within the meaning of the Natural Gas Act of 1938.

2. That it could not transport and market gas in the condition it was produced from the wells but first must remove certain hydrocarbons therein contained and reduce the moisture content.

3. That on December 1, 1946, Natural, as purchaser, entered into a written contract with certain individuals under the firm name of Harrington and Marsh, as sellers, agreeing to buy a daily average of 76,000 m.c.f.

4. That Harrington and Marsh agreed to construct a gasoline plant and a dehydration plant and operate the same to remove from the raw gas as produced from the wells all hydrocarbons and water to a dew point which would not exceed a temperature of 25° Fahrenheit at a pressure of not more than 785 pounds per square inch in order that the formation of hydrates and/or the condensation of hydrocarbons would not occur in Natural's pipe line system.

5. That sellers were authorized to extract from the raw gas certain hydrocarbons if such did not reduce the heating value of the hydrocarbons remaining in the gas below 950 British Thermal Units per cubic foot.

6. That in the event sellers failed to operate their gasoline and dehydration plant in accordance with such agreement, Natural was authorized to take possession thereof and operate the same for the account of the sellers, market the production therefrom, and account to sellers for the receipts.

7. That under such contract sellers were required to deliver the natural gas produced by it *into the custody of Natural on the suction side of Natural's compression station*[5], and after compression, Natural was required to redeliver such gas to sellers' gasoline plant.

8. That after the treatment of such gas and the extraction of hydrocarbons and dehydration sellers were required to deliver the dehydrated residue into Natural's pipe line at the outlet of such plant.

9. That Panoma, as successor in interest of Harrington and Marsh, realizes through the sale of liquid hydrocarbons extracted at such plant from the natural gas produced from the leases and the payment from Natural for the residue gas, the equivalent of more than 7¢ per thousand cubic feet, measured at 14.65 pounds pressure and was, therefore, complying with the previous order of the Commission as interpreted by the opinions of the Supreme Court of Oklahoma and the Supreme Court of the United States.

10. That if the orders were construed as requiring Panoma to realize for the gas delivered to Natural the sum of 7¢ per thousand cubic feet without giving consideration to the sums received by Panoma from the sale of the other hydrocarbons taken from such natural gas, or if the Commission should require Panoma to cease

---

[5] Throughout this brief, emphasis is supplied, unless otherwise noted.

deliveries to Natural, the same would be discriminatory, arbitrary and void, and violative of Sections 7 and 15 of Article II of the Constitution of Oklahoma and the Fourteenth Amendment to the Constitution of the United States, and would impose a discriminatory and unlawful burden upon Interstate Commerce contrary to the provisions of Section 8 of Article I of the Constitution of the United States.

THE COMMISSION'S ORDER

After a hearing, the Commission, on May 17, 1951, entered its order (R. 81-87), requiring and finding:

1. That Natural, within twenty days from the date thereof, pay unto Panoma the difference between the amount which it had paid Panoma and the amount Panoma was entitled to receive for gas delivered so that the total amount paid for gas delivered during the period covered by such payments would equal 7¢ per thousand cubic feet for the amount of gas delivered to Natural's compressor station, measured at a pressure base of 14.65 pounds absolute pressure per square inch.

2. That if Natural does not do so within such time, Panoma is directed to forthwith cease delivering gas to Natural.

3. That Natural does not comply with the Commission's order by paying Panoma 6¢ per thousand cubic feet of gas for a part of the gas delivered, measured at a

pressure base of 16.5 pounds per square inch absolute pressure, and it is directed to desist from so doing and to comply with said order.

4. That Natural shall pay Panoma for gas delivered to its compressor station the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch.

5. That in the event of its failure to do so, Panoma is ordered to stop delivery of gas to Natural.

THE EVIDENCE BEFORE THE COMMISSION

Each of the parties agreed that the gas which Panoma delivered to Natural was being delivered pursuant to the provisions of the contract between the parties (R. 98-122). In substance, that contract provided:

That Panoma, as the owner of substantial gas leaseholds within the Guymon-Hugoton Field, would fully develop such leases and construct a gathering line from the wells, and through such gathering line deliver gas at a pressure of 150 pounds per square inch into the custody of Natural at the intake side of a compressor station to be erected and operated by Natural.

That Natural would then compress the gas to a pressure of approximately 800 pounds per square inch and redeliver it to Panoma at the intake side of a gasoline and dehydration plant which Panoma was to construct and operate.

That Panoma would dehydrate and deliquify the gas and redeliver it to Natural through a meter station operated by Natural. The extracted liquids were to become the property of Panoma unless Panoma breached its contract to properly operate the plant, in which case Natural was authorized to take over the plant operation. This contingent provision never became applicable.

The amount of gas delivered by Panoma to Natural at the compressor station was stipulated (R. 53). The amount of money which Natural had paid Panoma was not in dispute (R. 53). The amount of money which Panoma had realized from the sale of extracted liquids was an undisputed figure (R. 52). Further, there was no dispute as to the expenses incurred by Panoma in operating the gathering system and plant (R. 52-53, Exhibit 8, R. 96, and Exhibit 14, R. 135-139).

It was further shown that the cost to Panoma of dehydrating the gas and extracting the hydrocarbons did not include any allowance for earnings on investment in the plant or for interest in financing the plant or salaries to officers of the corporation (R. 54). That a ten percent plant earning is a minimum to entice investors into such type of operations (R. 63, R. 70), and that if such items were allowed, Panoma's deficiency from present gas sales and liquids would be 1.48¢ per thousand cubic feet of gas produced (R. 56).

The evidence was reviewed by the Oklahoma Supreme Court to determine whether or not it supported the Commission's findings. In part, the court's analysis of the evidence reads as follows:

> "Panoma contends, and there is evidence to support it, that proper calculation of the operating cost of processing the gas, with proper charge for depreciation of the plant, or proper cost amortization, with maintenance and replacement costs, would result in showing a loss, or little if any profit at all, and might very well at different periods show an actual loss; that in any event the amount of profit or loss would fluctuate over varying periods, and could not enter into such a calculation as that proposed by Natural, because it would result in different calculations over varying periods, and would result in Natural's paying one price in one period to bring the aggregate up to 7¢ and a different price over a different period to bring such aggregate up to 7¢. Thus Panoma points out that Natural would be operating upon a different pay basis for each month, or for each quarter or for each semi-annual or annual period. And Panoma takes the view that Natural in effect and in fact is the purchaser of natural gas from the gas wells and not merely a purchaser of part only of the gas produced.
>
> "We think a consideration of all of the provisions of the sale contract is necessary to decide this controlling question. We think the narrow view of Natural was properly denied by Commission. It seems well demonstrated by the overall plan that Natural, if not in fact purchasing all of the gas located in Panoma's gas reserve, was at least purchasing all of the gas actually produced and run into the primary line of Natural and thence to its compressor station. The temporary return of the gas to Panoma after Natural had compressed it was a cus-

tody or possession for a particular purpose, that is, to clean up or purify or process the rough gas for one purpose only, and that was to redeliver the gas in a stipulated condition to Natural. This processing may or may not have resulted in a profit to Panoma in the past, and it may or may not result in a profit to Panoma in the future. Nevertheless, that processing must be performed by Panoma. It is essential to Natural that it be done. The contract so provides, and in addition thereto the contract authorized Natural, in the event of unsatisfactory operation by Panoma, to take over the plant and operate it at the cost of Panoma plus 10% management expense.

"Panoma produced the rough gas and delivered it to Natural. Thereafter when Panoma received back the gas and processed it and redelivered it to Natural, we regard that as merely a detail of the overall plan of processing the gas in selling and delivering it to Natural. We notice the fact that it was metered on this second delivery and that the expression was used that title passed at that point, but we do not consider that in any sense controlling, if it is even material in deciding the controlling question.

* * * * * * * * *

"The contract provides that Panoma desires to sell Natural all the gas underlying its entire gas reserves; and that Panoma has completed a number of gas wells and will drill additional wells and install gathering lines, etc., and operate the entire production, all for the purpose of delivering gas to Natural; and that it is contemplated by both parties that all the gas underlying Panoma's acreage will be necessary to cover Natural's requirements and to fulfill the sale contract; and that all of the entire gas production of Panoma is reserved for deliveries under the contract; and that all of Panoma's gas reserve is dedicated to the purpose of this sale contract; and that none of such gas shall be marketed to any other person; and reference is made to Natural's

lien of dedication on Panoma's leaseholds themselves.

"These contract provisions tend strongly to support Commission's findings, and to indicate that in truth and in fact Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced from under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought.

"We therefore agree with the conclusion of Commission that Natural purchased and took natural gas from this reservoir at less than 7¢ per thousand cubic feet wellhead price. The extent thereof was in the amount stipulated and therefore found by Commission" (271 P. 2d 360-361).

NATURAL'S POSITION

From the order of the Commission in the case at bar Natural appealed to the Supreme Court of Oklahoma. The order was affirmed, 271 P. 2d 354. A copy of the opinion is found in the Record at pages 149-169.

After the Supreme Court had denied a petition for rehearing (R. 169-173), and issued its order allowing an appeal (R. 174-175), Natural lodged this appeal, alleging (R. 178), that as it purchased residue gas (as distinguished from natural gas), for immediate transportation to other states, that the challenged order of the Commission violated the Commerce Clause of the Federal Constitution, and as a second point, that the chal-

lenged order denied it the equal protection guaranteed by the Constitution, in that Phillips Petroleum Company, by the Commission's Order No. 19702[6], was allowed to sell gas under similar circumstances.

Other issues were raised by the assignments of error and prayer for reversal, but were not urged in appellant's brief.

SUMMARY OF THE ARGUMENT

Cities Service Gas Company v. *Peerless Oil and Gas Company*, 340 U. S. 179, 181, we think settles all of the commerce questions advanced by appellant, unless the record does not support the conclusion that it is purchasing natural gas, or unless the Commission's order extended state regulations beyond the production and gathering of gas. It will be demonstrated that the Commission's order herein challenged does no more than make the Commission's fieldwise order[7] applicable to Natural in the manner contemplated by this Court in the *Cities Service* opinion.

---

[6] The order is shown (R. 139-143). The proceedings leading up to the issuance of that order are not a part of the record herein.

---

[7] Commission Order No. 19514, Record 134:

"1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch."

As a second proposition, we will show that the order thus construed does not violate the Equal Protection Clause of the Fourteenth Amendment.

ARGUMENT AND AUTHORITIES

I.

The determination that certain companies operating in the field are natural gas companies subject to the jurisdiction of the Federal Power Commission does not destroy state regulation of the production of natural gas.

The validity of the basic order of the Commission fixing a minimum price of gas at 7¢ per thousand cubic feet is no longer open to question. *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U. S. 179.

In that case it was contended that the Commission acted beyond its authority; that the statutes of the state, if construed to permit price fixing, violated the state constitution; that the statutes and the order of the Commission violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment in that there was no evidence of physical waste; that the statutes contained no adequate standards governing Commissioners' powers; that the orders are too vague; that the proceedings lacked procedural due process; that the specific order discriminated against Cities Service; that the general order applying only to the Guymon-Hugoton field dis-

criminated against those producing or purchasing from that field.

It was further contended that the orders of the Commission violated the Commerce Clause, Article I, Section 8, of the Constitution in that they caused an undue burden upon and discriminated against interstate commerce.

The Oklahoma court held that the Commission's orders did not violate the Federal constitution. This Court agreed with the conclusion of the Oklahoma Court, and said at pages 185, 186 and 189 of the opinion:

> "The Due Process and Equal Protection issues raised by appellant are virtually without substance.
> * * * * * * * * *
>
> "The Commerce Clause gives to the Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. * * * It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce.
> * * * * * * * * *
>
> "We hold that on this record the Oklahoma Corporation Commission issued valid orders, and that the decision of the court below should be affirmed * * *."

It is now unquestioned that the fixing of a minimum price at which a depletable resource is taken from the earth is a useful tool in shaping a cradle of conservation therefor. A fair price exerts pressure against waste,

tends to prevent inefficient use, promotes maximum development, and extends operations to a period of greater reservoir exhaustion. At the same time, in regulating and protecting the interlocking rights of the owners of such reservoirs, ratable-take laws are brought into play, which laws in themselves become meaningless unless combined with minimum price legislation. State regulations designed for these dual purposes point toward authorized goals. In the *Cities Service* opinion you said (page 184-186):

> "These sections explicitly authorize the order requiring Cities to take gas ratably from Peerless and at a specific price. In 1915, Oklahoma strengthened its gas conservation laws by authorizing regulation of production of gas from a common source when production is in excess of market demand. 52 Okl. Stats., Secs. 239-240 (1941). The Commission was authorized to limit the gas taken by any producer to 'such proportion of the natural gas that may be marketed without waste' as the natural flow of gas at the wells of such producer bears to the total natural flow of the common source. In authorizing such regulation, the legislature declared that it acted 'so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.' The Oklahoma Supreme Court construed the 1915 Act to permit the general order setting a minimum price in the field. It further ruled that economic waste was within the contemplation of the statute. Finally, with regard to state questions, it held that the orders did not violate the Oklahoma Constitution.

"The Oklahoma Court also concluded that the statutes so construed and the orders made thereunder do not violate the Federal Constitution on the grounds relied on by Cities Service. We agree.

"The Due Process and Equal Protection issues raised by appellant are virtually without substance. It is now undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas. This Court has upheld numerous kinds of state legislation designed to curb waste of natural resources and to protect the correlative rights of owners through ratable taking. *Champlin Refining Co. v. Corporation Commission*, (1932), 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, or to protect the economy of the state. *Railroad Commission of Texas v. Rowan & Nichols Oil Co.*, (1940), 310 U. S. 573, 60 S. Ct. 1021, 84 L. Ed. 1368. These ends have been held to justify control over production even though the uses to which property may profitably be put are restricted. *Walls v. Midland Carbon Co.*, (1920), 254 U. S. 300, 41 S. Ct. 118, 65 L. Ed. 276."

Conservation is in the national interest and in the interest of all of us, whether living in or out of Oklahoma. No exception can be made of the customers of Natural. Its customers undoubtedly have as much interest both in the full utilization of gas already discovered and in the replacement of consumed gas through new reserves as do those of us who are not, but would like to become consumers of natural gas. Congress has said that the public, and that is all of us, both in and out of Oklahoma, are likewise interested in seeing that this most convenient and usable of fuels does not, by reason of its de-

sirability, command an exorbitant and unfair price when sold to the public, and so through the Natural Gas Act Congress has empowered the Federal Power Commission to limit the price for which gas may be sold for resale in interstate commerce. The authority vested in the Federal Power Commission does not, however, authorize any regulation of production and gathering[8].

Thus, we have unquestioned jurisdiction in both the state and federal governments to exercise their entrusted governmental function to protect and regulate, within the framework of their separate powers to regulate, at the opposite end of streams of natural gas.

The movement of natural gas in interstate commerce commences when it is jolted from repose in nature's rock and is continuous thereafter until it arrives at the burner tip. In the remote recesses of a reservoir, its movement is, of course, slow, but at an increasing pace it arrives at the well bore and thereafter never ceases its movement as it flows through the gathering lines into the compressors, thence to the dehydrators, and thence through long transmission lines to distribution lines, and through such to the burner tip.

To select any point on this stream and say that its interstate movement begins at that point would be a wholly artificial conclusion based on the application of

[8] The Natural Gas Act, 52 Stat. 821, 15 U. S. C. Sec. 717 provides in paragraph (b):

"The provisions of this chapter * * * shall not apply * * * to the production or gathering of natural gas."

some variety of rule established in relation to other commodities unlike gas. Undeniably, the state may regulate at the wellhead. Natural gas is already moving in interstate commerce when it arrives at the wellhead, and he who says to the contrary is blind to the truth. All state gas regulations in the interest of conservation and the protection of correlative rights are thus, in fact, imposed on gas moving in interstate commerce. It would seem that if such state regulations are to have substance, the only point in the movement of gas at which they may be broken off is after they have effectively accomplished the purpose for which they were enacted, whether this be at the wellhead, a half mile past the wellhead, at the point where gas enters a compressor station, leaves a compressor station, enters a dehydration plant or leaves a dehydration plant. The state's regulation relates to production. If gas is produced in violation of such regulation, it has been nonetheless unlawfully produced because it has passed a wellhead, a compressor station, or a processing plant.

When this Court considered the validity of the regulation now in question it recognized that the price regulation applied to all gas taken from the Guymon-Hugoton field.

> "The price regulation applies to all gas taken from the field, whether destined for interstate or intrastate consumers."
>
> *Cities Service* v. *Peerless*, 340 U. S. 188.

And in *Phillips Petroleum Company* v. *Oklahoma*, 340 U. S. 192, you said:

> "In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any."

Appellants therefore beg the question when they now contend that as they purchase *residue* gas the gas which they buy is not subject to state regulation. It is natural gas when it is first received by Natural. It is still natural gas, although dehydrated and deliquified when delivered to them the second time after it has passed through Panoma's plant. In fact, if it is not natural gas, appellants' primary contention is entirely without force, as the Natural Gas Act is limited in effect to the transportation and sale of natural gas. They can not say that the state's regulations which may be effective as to "the production or gathering of natural gas" have no effect because the product involved is not natural gas, and at the same time contend that the sale is exclusively governed by the Natural Gas Act because the product involved is natural gas being offered for resale in interstate commerce.

It seems then that the sole question is whether or not the language of the Commission's minimum price order, which this Court has already approved, is broad enough to encompass the gas which appellants purchased. Since no gas flows from the Guymon-Hugoton

field free of the Commission's order, and since it is conceded that Natural is buying natural gas, it would seem that the question almost answers itself. Since the Commission of Oklahoma is charged with the responsibility of making its order effective, its enforcement order must be sustained unless unreasonable or so devoid of supporting facts that it violates due process. *Nebbia* v. *People of the State of New York*, 291 U. S. 502, 516; *Snowden* v. *Hughes*, 321 U. S. 1, 8, 9, 10, 11.

When the gas in question flowed through the wellheads of Panoma its destiny for interstate commerce did not invalidate Oklahoma regulations in respect thereto. At the time the gas passed the wellhead no change of title took place, or any other act occurred which would enable the producers thereof to say to the Commission: "I have complied with your regulations; my gas is now free of your charge and I may do as I wish with it." The gas thus still charged with Oklahoma's regulations was delivered into the custody of Natural, and the gas, still charged with such regulations, was by Natural compressed and redelivered to Panoma. Panoma extracted therefrom the liquids (portions of which were salable), and again redelivered the gas to Natural.

Did Oklahoma regulations lose their force at the wellhead? In the compressor? In the scrubber? In the condenser? At Panoma's meter station? Where along this route in the circumstances before it, could the Corpora-

tion Commission of Oklahoma say that its orders had been complied with and the gas, or those who had its custody, relieved from any further necessity of compliance with such orders? Was it unreasonable for the Commission to hold that by such delivery Panoma parted with custody of the gas without receiving 7¢ therefor and that it was not complying with the Commission's order even though it thereafter, as the operator of a processing plant, realized additional sums which, in gross, if added to the gas price, would equal 7¢ per thousand cubic feet?

Moreover, was it unreasonable or discriminatory for the Commission to find that even if the operation of such plant be taken into consideration that there was no evidence that the reasonable profits from such operations would offset the deficiency in the price received for the gas taken from the formation? The language of the Commission's original order was not unreasonably applied or misinterpreted in the Commission's enforcement order which is the subject of the instant appeal. Its basic fact conclusions are supported by the record and this Court should not now impose its judgment in the internal administrative affairs of the State of Oklahoma. Such would be the effect of a reversal. *Nebbia* v. *People of the State of New York*, *supra*, 291 U. S. 502, 516.

But appellant says, in effect, that even if the foregoing analysis be correct, that the original, or basic 7¢

order must now fall because of the decision in *Phillips Petroleum Company* v. *Wisconsin*, (1954), 347 U. S. 672. The Phillips decision, as we understand it, holds that on the facts before the Federal Power Commission, Phillips Petroleum Company should have been held a natural gas company subject to the provisions of the Natural Gas Act. That holding cannot by implication be construed as a ruling that automatically and thereby Phillips and all others similarly situated were exempted from the application of all state conservation orders. The Natural Gas Act was in the mind of the Court when it upheld the minimum price order in the *Cities Service case*. Therein you said:

> "Appellant does not contend that the orders conflict with the federal authority asserted by the Natural Gas Act, 52 Stat. 821, (1938), 15 U. S. C. Sec. 717, *et seq.*, (1948), 15 U. S. C. A. Sec. 717 *et seq.* The Federal Power Commission has not participated in these proceedings. Whether the Gas Act authorizes the Power Commission to set field prices on sales by independent producers, or leaves that function to the states, is not before this Court.
>
> "We hold that on this record the Oklahoma Corporation Commission issued valid orders, and that the decision of the court below should be affirmed."
>
> 340 U. S. 179, 188, 189.

The affirmation of the original order in the *Cities Service* opinion made that order applicable to all interested in the subject field. If the present appellant by this appeal is exempted from the application thereof, such

would in fact constitute discrimination in favor of this appellant and against the other producers and purchasers in the field, as only Natural can benefit by the proceedings herein.

With full awareness of the Natural Gas Act and the powers delegated to the Power Commission, this Court upheld the basic order which is now being applied to this appellant. That order became final and so remained until the Commission issued an order which increased the minimum amount which must be realized for a thousand cubic feet of natural gas from 7¢ to 9.8262¢. The interval was more than six years. The *Phillips* decision did not come down until after that six year period had ended. It must be presumed that all others in the field have complied and the only person who would now obtain the benefit of a determination that such basic order cannot have effect because of the *Phillips* decision is the present appellant. Whatever may be said of the subsequent orders of the Commission fixing a minimum amount at which natural gas may be taken from the producing formation, the original price order was in effect during all of the period of time involved in this appeal.

We do not feel bound by the arguments made by Phillips in the *Phillips case* as to the conflict which exists in areas of regulation permissible to the Federal Power Commission and the state regulatory agencies. But we do say that for all of the reasons so well expressed in the

Cities Service opinion no conflict may be imagined or foretold for the purpose of striking down either of two compatible regulations.

> "But it is well settled that the gap referred to is that thought to exist at the time the Natural Gas Act was passed, and the jurisdiction of the Commission is not affected by subsequent decisions of this Court which have somewhat loosened the constitutional restrictions on state activities affecting interstate commerce, *in the absence of conflicting federal regulation.*"
>
> *Phillips Petroleum Co. v. State of Wisconsin*, 347 U. S. 672, 684.

Some significance must be given to the fact that the Federal Power Commission has not intervened herein. It may be surmised that the agency charged with the enforcement of the Natural Gas Act does not believe the order in question, or its enforcement, conflicts with its own right to regulate.

II.

The Commission's Order of Enforcement was made in accord with the evidence presented and does not violate the equal protection clause of the Fourteenth Amendment.

It should be remembered that the basic order of the Commission (No. 19,415), fixes the minimum price at which gas may be taken from the formation (R. 134). Order No. 19,702 (R. 139-143), discloses that it was based upon an application of Phillips Petroleum Com-

pany for an order to vacate the basic price order (No. 19,514). Therein it is found:

That Phillips is delivering residue gas to Panhandle Eastern Pipe Line Company at a price of 4.67¢ per thousand cubic feet.

That Phillips transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant to another plant owned by Phillips where the liquid hydrocarbons are then refined and sold.

That the larger percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5½¢ per gallon; that Phillips is now realizing from the natural gas produced the equivalent of 7¢ per thousand cubic feet at the wellhead; that Phillips did not see fit to introduce any evidence as to profits or losses from the production of natural gas in the field, and that since the application alleges hardship if forced to comply with the basic price order, it was incumbent upon Phillips to introduce proof showing wherein such hardship would occur. None of the evidence upon which Order No. 19,702 was issued is incorporated in the record of the case at bar.

Phillips took an appeal from the Commission's order to the Supreme Court of the State of Oklahoma, and upon affirmance thereof, appealed to this Court. In that appeal, *Phillips Petroleum Company* v. *State*, 340 U. S. 190, 192, this Court said:

"Appellant does not argue that the orders violated the Commerce Clause, Art. 1, Sec. 8, Cl. 3. In other respects, the appeal presents only minor variations of the issues raised by Cities Service. Phillips argues that it is not a purchaser but merely a producer; that unlike the situation in Cities Service, the order as applied to it lacks any connection with correlative rights, the interest of the public, monopolistic practices or discrimination. The distinction is without a difference: the connection between realized price and conservation applies to all production in the field, whether owners purchase from others or not and whether they own pipe lines or not. In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any.

"Phillips also relies heavily on the contention that the orders are unreasonably vague. *In substance, this argument is nothing more than that the determination by an integrated company of proceeds realized from gas at the wellhead involves complicated problems in cost accounting.* These problems are common to a host of valid regulations. There is nothing to indicate that Phillips will be penalized for reasonable and good faith efforts to solve them."

The order of the Commission involved in the present appeal (R. 81-87), specifically finds in paragraph 10 (R. 84-85), that Order No. 19,702 entered upon the application of Phillips Petroleum Company was not entered as a fieldwide order, but was entered as affecting a part thereof only, and on the application of an owner of a portion of the wells in the field, and was based on facts presented to the Commission in support of the special relief or exception which the applicant in that case

had requested. The Commission specifically found that in the Phillips hearing, Phillips did not see fit to introduce any evidence as to the profits or losses from the production of natural gas from the Guymon-Hugoton Field: that this Commission does not feel it is bound on Panoma's application to a determination of facts or any order entered on Phillips' application. It further found that it was not required in the present proceeding to vacate, modify or interpret Order No. 19,702.

Thus, the enforcement of the basic order (19,514), as to Phillips and as to Panoma was considered in separate proceedings upon entirely different evidence. The evidence produced at the hearing before the Commission upon the application of Phillips is not a part of the record. The evidence produced before the Commission upon application of Panoma has heretofore been related. We say that unquestionably such evidence fully supports the Commission's conclusion that Panoma was not receiving 7¢ per thousand cubic feet for its produced natural gas.

Thus, Natural desires this Court to entertain an appeal from a Commission vested with both judicial and legislative powers upon a fact question raised by Natural. This, this Court will not do. *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 445.

Not only does Natural desire an adjudication upon a question of fact, it desires to compare two similar proceedings and the Commi. ion's rulings thereon without

incorporating into the record the evidence adduced in one of these proceedings.

In *Railway Express Agency, Inc.*, v. *New York*, 336 U. S. 106, 109, cited by appellants, this Court said:

> "We do not sit to weigh evidence on the due process issue in order to determine whether the regulation is sound or appropriate; nor is it our function to pass judgment on its wisdom * * *."

The opinion in that case upon the question of equal protection is of no assistance to the Court in the case at bar. It was therein contended that the regulation draws the line between advertisements of products sold by the owner of the truck and general advertisements, and that that was unequal treatment. The Court further said at page 110:

> "We cannot say that that judgment is not an allowable one. Yet if it is, the classification has relation to the purpose for which it is made, and does not contain the kind of discrimination against which the Equal Protection Clause affords protection. It is by such practical considerations based on experience rather than by theoretical inconsistencies that the question of equal protection is to be answered. * * * It is no requirement of equal protection that all evils of the same genus be eradicated or none at all."

There can be no denial of equal protection if all parties are governed by the same rule. The rule prohibiting denial of equal protection may be invoked only upon satisfactory proof by pertinent evidence of different practices upon like but different sales. The fact that

the evidence is different in every proceeding to enforce the order does not in anywise affect the order's validity.

The Equal Protection Clause of the Constitution does not prohibit class legislation. It requires only that the classification be not arbitrary or unreasonable. Different factual situations not only deserve but require this treatment. *Nebbia* v. *The People of the State of New York*, 291 U. S. 502.

Judicial and administrative decisions resulting in unequal application to different persons is not a denial of equal protection unless it be apparent there was an intentional or purposeful discrimination.

In *Snowden* v. *Hughes*, 321 U. S. 1, 8, 9, 11, 12, this Court said:

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, c.f., *McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79, 86, 87, 36 S. Ct. 498, 501, 60 L. Ed. 899, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself, *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373, 374, 6 S. Ct. 1064, 1072, 1073, 30 L. Ed. 220. But a discriminatory purpose is not presumed. *Tarrance* v. *State of Florida*, 188 U. S. 519, 520, 23 S. Ct. 402, 403, 47 L. Ed. 572; there must be a showing of 'clear and intentional discrimination'. *Gundling* v.

City of Chicago, 177 U. S. 183, 186, 20 S. Ct. 633, 635, 44 L. ed. 725: * * * Thus the denial of equal protection by the exclusion of negroes from a jury may be shown by extrinsic evidence of a purposeful discriminatory administration of a statute fair on its face. * * * But a mere showing that negroes were not included in a particular jury is not enough: there must be a showing of actual discrimination because of race * * *.

"Another familiar example is the failure of state taxing officials to assess property for taxation on a uniform standard of valuation as required by the assessment laws. It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination, which may be evidenced, for example, by a systematic undervaluation of the property of some taxpayers and a systematic over-valuation of the property of others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute.

* * * * * * * * *

"It was not intended by the Fourteenth Amendment and the Civil Rights Acts that all matters formerly within the exclusive cognizance of the states should become matters of national concern.

"A construction of the equal protection clause which would find a violation of federal right in every departure by state officers from state law is not to be favored."

See also: *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, *supra*, and *Phillips Petroleum Company v. State*, *supra*.

In the *Phillips case* this Court found no discrimination or violation of the Equal Protection Clause of the Constitution, and in answer to the Phillips contention

that the order as applied to it lacks any connection with correlative rights, this Court said, at page 192:

> "The distinction is without a difference: the connection between realized price and conservation applies to all production in the field, whether owners purchase from others or not, and whether they own pipe lines or not. In a field which constitutes a common reservior of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any."

The Equal Protection Clause of the Constitution was raised by Natural and relied upon by Natural in the Commission when Natural attempted to prove that the order was discriminatory as to it, and that Panoma through sales of residue gas to it and sales of hydrocarbons extracted was actually receiving in excess of 7¢ per thousand cubic feet. When it developed that the proof offered did not sustain this contention, the Commission was required to go no further. It simply concluded upon the evidence that Panoma was selling gas for less than 7¢ per thousand cubic feet, and properly directed that Panoma desist from so doing and that it comply with the minimum price order heretofore approved by this Court.

CONCLUSION

The basic minimum price order of the Commission fixing the price which must be realized for all gas produced in the field at a minimum of 7¢ per thousand cubic

feet was approved by both the Supreme Court of the State of Oklahoma and this Court.

After the effective date of the Commission's order, and after approval thereof by this Court, it was judicially determined that certain companies purchasing gas in the field are natural gas companies and as such are subject to the jurisdiction of the Federal Power Commission. The Federal Power Commission has not attempted to fix the amount per thousand cubic feet which must be realized for gas taken from the field, or to prescribe a minimum wellhead price therefor. The Natural Gas Act by its specific terms does not apply to the production of natural gas.

Conservation of this valuable, depletable natural resource cannot be effectively accomplished without requiring a minimum price which will prevent waste, encourage drilling and development and protect the correlative rights of many owners in the reservoir. The State's right and power to enact laws and regulations for the protection of its natural resources has long been recognized and approved by this Court. This Court should now answer the question reserved in the *Phillips* decision by leaving the power and function of setting field prices of natural gas produced to the states who are best fitted to know and control matters of local interest. To say that natural gas is imbued with national interest is not sufficient. Every article regulated by the states is to some ex-

tent imbued with national interest. It is only when a serious conflict arises between the arms of the national government, on the one hand, and the state on the other, and the national government has preempted the field either by constitutional provisions or federal legislation that state legislation or regulations should be stricken down. In the case at bar neither of these conditions exist. This Court has clearly held the state regulation valid under the terms of the Constitution. The Natural Gas Act itself leaves to the state the control and regulation of the production of natural gas.

Certainly, if the basic minimum price order is valid, and it must now be conceded that it is, the enforcement of such valid order must be sustained. The evidence before the Commission clearly shows that Panoma was not receiving 7¢ per thousand cubic feet for gas produced by it. Natural defended the enforcement of this order by attempting to show compliance therewith. Compliance was not shown and the Commission properly so found. When the point was reached that made it clearly ascertainable that the order was not being complied with, the Commission was justified and required to so find, and order compliance.

By saying that the Commission found in a companion case that Phillips was complying with the order by receiving for the sale of gas and the hydrocarbons taken therefrom a price equal to 7¢ per thousand cubic

feet in no wise affects or controls the Commission s action in a separate hearing, between different parties, and upon entirely different evidence. Even if the Commission reached a conclusion that some other body or court would not have reached, the Equal Protection Clause of the Constitution is not violated. There is not present in the case any averment or intimation that the Commission purposefully or intentionally discriminated against Natural. The Constitution does not require situations which are different in fact or opinion to be treated in law as though they were the same.

The judgment of the Supreme Court of Oklahoma should be affirmed.

Respectfully submitted,

FLOYD GREEN,
T. MURRAY ROBINSON,
LEON SHIPP,
930 Hightower Building,
Oklahoma City, Oklahoma,
Attorneys for Appellees.

MARCH, 1955.

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE
OF OKLAHOMA, ET AL.

FILED SEPTEMBER 1, 1954

PROBABLE JURISDICTION NOTED NOVEMBER 8, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE
OF OKLAHOMA, ET AL.

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Oklahoma	1	1
Petition in error in Case No. 35731	1	1
Petition in error in Case No. 35732 (omitted per stipulation)	12	
Petition in error in Case No. 35734 (omitted per stipulation)	27	
Transcript of testimony and proceedings before the Corporation Commission of the State of Oklahoma	49	8
Application	51	9
Schedule "A"—(omitted per stipulation)	55	
Order setting cause for hearing (omitted per stipulation)	69	
Notice of hearing (omitted per stipulation)	72	
Order continuing cause (omitted per stipulation)	76	
Motion of Cities Service Gas Company for clarification (omitted per stipulation)	79	
Motion of Natural Gas Pipeline Company of America for clarification (omitted per stipulation)	85	
Motion of Panhandle Eastern Pipe Line Company for clarification (omitted per stipulation)	88	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 14, 1954

—8961

Transcript of testimony and proceedings before the Corporation Commission of the State of Oklahoma—Continued	Original	Print
Transcript of testimony	92	11
Appearances	92	11
Extracts from testimony of—		
Thomas C. Bailey	139	12
P. McDonald Biddison	278	51
Testimony of H. W. Long	306	66
Extracts from testimony of—		
A. M. Rippel	365	67
George P. Bund	439	97
T. E. Smiley	470	113
George Bund (recalled)	527	116
T. McDonald Biddison (recalled)	532	118
Testimony of Allen B. Hiatt	544	124
Stipulation of counsel	547	126
Response of Natural Gas Pipeline Company of America	563	131
Answer of Cities Service Gas Company (omitted per stipulation)	566	
Supplement to response of Panhandle Eastern Pipe Line Company (omitted per stipulation)	574	
Response of Northern Natural Gas Company (omitted per stipulation)	577	
Report of the Commission	588	132
Notice of appeal of Cities Service Gas Company (omitted per stipulation)	598	
Application of Panhandle Eastern Pipe Line Company to repeal and motion for new trial (omitted per stipulation)	600	
Notice of appeal of Panhandle Eastern Pipe Line Company (omitted per stipulation)	603	
Application of Panhandle Eastern Pipe Line Company for supersedeas (omitted per stipulation)	605	
Application of Panhandle Eastern Pipe Line Company for certification of facts and record to the Supreme Court (omitted per stipulation)	607	
Application of Northern Natural Gas Co., for repeal and motion for new trial (omitted per stipulation)	610	
Notice of appeal of Northern Natural Gas Co. (omitted per stipulation)	613	
Application of Northern Natural Gas Co., for supersedeas (omitted per stipulation)	615	
Application of Northern Natural Gas Co., for certification of facts and records to the Supreme Court (omitted per stipulation)	617	
Order allowing appeal of Northern Natural Gas Co. (omitted per stipulation)	620	

	Original	Print
Transcript of testimony and proceedings before the Corporation Commission of the State of Oklahoma—Continued		
Order overruling application to repeal and motion for new trial of Northern Natural Gas Co. (omitted per stipulation)	622	
Order allowing appeal of Panhandle Eastern Pipe Line Co. (omitted per stipulation)	625	
Order overruling application to repeal and motion for new trial of Panhandle Eastern Pipe Line Co. (omitted per stipulation)	628	
Notice of appeal of Michigan-Wisconsin Pipe Line Co. (omitted per stipulation)	631	
Application for supersedeas of Michigan-Wisconsin Pipe Line Co., (omitted per stipulation)	633	
Application of Michigan-Wisconsin Pipe Line Co., for repeal and motion for new trial (omitted per stipulation)	635	
Application of Michigan-Wisconsin Pipe Line Co., for certification of facts and record to the Supreme Court (omitted per stipulation)	638	
Colloquy between Commission and counsel (omitted per stipulation)	640	
Order allowing appeal of Michigan-Wisconsin Pipe Line Co. (omitted per stipulation)	644	
Order overruling application to repeal and motion for new trial of Michigan-Wisconsin Pipe Line Co. (omitted per stipulation)	647	
Motion of natural Gas Pipeline Co. of America to vacate order and for new trial	650	138
Notice of appeal, request for preparation of record and certification of facts and record by Natural Gas Pipeline Co.	655	140
Order overruling motion to vacate order and for new trial of Natural Gas Pipeline Co.	658	141
Stipulation as to Michigan-Wisconsin Pipe Line Co.	660	141
Supplemental brief of plaintiffs in error	674	144
Supplemental brief of defendant in erorr, Phillips Petroleum Co.	682	148
Response of plaintiffs in error, Natural Gas Pipeline Co., of America and Michigan-Wisconsin Pipe Line Co.	699	158
Majority opinion, Arnold, J.	709	165
Dissenting opinion, Blackbird, J.	734	178
Petition for rehearing	754	189
Amended petition for rehearing	764	193
Response to petition for rehearing	768	195
Orders denying petition for rehearing	776	198
Notice of appeal to the Supreme Court by Michigan-Wisconsin Pipe Line Co., and Natural Gas Pipeline Company	777	199

	Original	Print
Notice of appeal to the Supreme Court by Panhandle Eastern Pipe Line Co., (omitted per stipulation)	783	
Exhibits 11-21, inclusive, "Fuel Source Data"	790	215
Excerpts from stipulation covering Exhibits 33 and 34—Contract dated April 5, 1943 between Phillips Petroleum Company, as seller, and Panhandle Eastern Pipe Line Company as purchaser, as supplemented by contract dated April 25, 1944	797	215
Extracts from stipulation covering Exhibits 35, 36 and 37—Contract entered into between Phillips Petroleum Company, as seller, and Michigan-Wisconsin Pipe Line Company, as purchaser, on December 11, 1945, as as amended August 9, 1948 and December 1, 1949	819	219
Exhibit No. 39—Statement of Liquid Income v. Gathering and Processing Cost	916	223
Exhibit No. 40—Philips Investment in Gathering and Processing Property	917	224
Exhibit No. 41—General Rules and Regulations of the Corporation Commission of Oklahoma (omitted per stipulation)	918	
Exhibit No. 42—Order No. 24,745 of the Corporation Commission of Oklahoma (The Panoma Case)	919	224
Exhibit No. 43—Order No. 19,702 of the Corporation Commission of Oklahoma (The Phillips Order)	929	230
Exhibit No. 44—Order No. 19,514 of the Corporation Commission of Oklahoma (Peerless v. Cities Service)	936	235
Exhibit No. 45—Order No. 17867 of the Corporation Commission of Oklahoma (omitted per stipulation)	948	
Exhibit No. 46—Response of Panhandle Eastern Pipe Line Co.	974	243
Exhibit No. 47—Cities Service Stipulation	977	244
Exhibit No. 48—Contract between Harrington & Marsh, as sellers, and Natural Gas Pipeline Company of America	983	247
Exhibit No. 49—Northern Natural Stipulation	1007	272
Exhibit No. 50—Panhandle Eastern Stipulation	1010	274
Exhibit No. 52—Six sheets of production data	1015	278
Stipulation as to record (omitted per stipulation)	1016	
Clerk's certificate (omitted in printing)	1018	
Order noting probable jurisdiction	1019	285

[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35731

NATURAL GAS PIPELINE COMPANY OF AMERICA, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and Certain Mineral Owners in Texas County, Oklahoma, and Phillips Petroleum Company, Defendants in Error

PETITION IN ERROR—Filed September 25, 1952

Comes now Natural Gas Pipeline Company of America, hereinafter referred to as Natural, plaintiff in error, and complaining of the Corporation Commission of the State of Oklahoma, hereinafter referred to as Commission, and certain mineral owners in Texas County, Oklahoma, who were applicants before the Commission, hereinafter referred to as mineral owners and Phillips Petroleum Company, defendants in error, shows to the Court that on the 29th day of July, 1952, in Cause CD No. 3628 before the Commission, the said Commission issued and entered its certain Order No. 26096, made effective as of August 1, 1952, whereby the Commission ordered:

[fol. 2] "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If

the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

"2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic foot.

"3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.)."

Thereafter, and within the time allowed by law, Natural gave notice of appeal from said order, and now files herewith a complete transcript of the record of the proceedings had before the Commission and of the evidence upon which Order No. 26096 was based, including a copy of said order, which said transcript is hereto attached, marked Exhibit "A" and made a part of this petition in error.

[fol. 3] Natural, which is not a producer of natural gas in Oklahoma and purchases no natural gas at the wellhead in Oklahoma, its only activity in said state being the purchase from Panoma Corporation, herein referred to as Panoma, of substantial quantities of residue gas (one of the constituents of the natural gas) under a long term contract and the transportation of such gas (and other gas) through and from the State of Oklahoma in interstate commerce destined to points of sale in other states, alleges that there is error in said proceedings, order and judgment in this, to-wit:

1

The Commission was without power or jurisdiction, either constitutional or statutory, to make and enter the order complained of.

2

Order No. 26096 is contrary to law.

3

Order No. 26096 is contrary to the evidence, and is not sustained by substantial evidence.

4

Order No. 26096 is invalid because the evidence wholly fails to establish such a substantial change in conditions as would authorize or justify an increase in the minimum price of natural gas produced in the Guymon-Hugoton [fol. 4] Field, whether sold at the wellhead or elsewhere, from 7¢ per m.c.f. provided for in a former order of the Commission to 9.8262¢ per m.c.f.

5

Order No. 26096 operates to impose, in respect to gas produced for movement or sale in interstate commerce, an unlawful burden upon and regulation of interstate commerce, in violation of Section 8, Article I, of the Constitution of the United States.

6

Order No. 26096 operates to deprive Natural of its property and property rights without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States and of Section 7, Article II, of the Constitution of the State of Oklahoma.

7

Order No. 26096 operates to impair the obligations of a contract between Natural and Panoma Corporation, in violation of Section 10, Article I, of the Constitution of the United States, and Section 15, Article II, of the Constitution of the State of Oklahoma.

8

Order No. 26096 operates to take of Natural's property and property rights for private use, in violation of Section

23, Article II, of the Constitution of the State of Oklahoma.

[fol. 5] 9

Order No. 26096 by requiring Panoma to exact from Natural for residue gas which is purchased and transported by Natural, a natural gas company under the Natural Gas Act, as amended (15 U.S.C. 717), and thus requiring Natural to pay, the same price fixed by the order for natural gas from which no constituent has been removed, amounts to an unlawful discrimination against, regulation of and imposition of an unlawful burden upon, interstate commerce, in violation of Section 8, Article I, of the Constitution of the United States.

10

Order No. 26096 which prohibits the production of natural gas in the Guymon-Hugoton Field, except upon sale of the gas after production, or the sale of residue content of the gas after production, gathering and processing, in either case, at a price stated in the order, imposes an embargo and prohibition on the sale of such gas produced or the residue content thereof, except upon payment of an increase in price for the benefit of the producer of said gas, and thus imposes in respect to gas destined for interstate movement an unlawful regulation on interstate commerce therein, in violation of Section 8, Article I, of the Constitution of the United States.

11

Order No. 26096 violates the Fourteenth Amendment to the Constitution of the United States, in that it denies [fol. 6] to Natural equal protection of the law. This results from the fact that purchasers of gas at the wellhead acquire all the constituents of such natural gas, including extractable liquid hydrocarbons, at and for the same minimum price which Natural is required to pay for only a portion of the constituents of such natural gas after the extraction of valuable liquid hydrocarbons therefrom.

12

Order No. 26096 constitutes an unwarranted and unnecessary invasion of the property rights of Natural under the guise of the exercise of the police power without justification thereunder.

13

Order No. 26096 is arbitrary, unreasonable and void and in excess of the power and jurisdiction of the Commission insofar as it fixes a price for residue gas identical with that fixed for natural gas on the basis of an assumption inherent in the order, unsupported by any evidence showing that in no instance, now or in the future, will the operation of a processing plant yield the operator thereof a return greater than the cost of gathering and processing.

14

Order No. 26096 is beyond the constitutional and statutory jurisdiction of the Commission in that:

(a) The Commission has no jurisdiction to fix the price [fol. 7] at which natural gas shall be sold when such gas is sold at points remote from the wellhead.

(b) The Commission has no jurisdiction to fix the price at which residue or any other constituent of natural gas shall be sold at the outlet of a gasoline plant.

(c) The Commission has no jurisdiction to ascertain, determine or fix the reasonable cost of gathering and processing natural gas, or to assume that such cost will remain static.

(d) The Commission cannot indirectly fix the price which a producer who sells a constituent of its gas in interstate commerce shall receive for such constituent by a prohibition of the production of the natural gas, of which such residue gas is a constituent, unless such price be received.

15

Order No. 26096 by which the Commission attempted directly to fix the price at which such residue gas shall be sold, or indirectly to fix such price by prohibiting the production of natural gas, unless the residue therefrom be

sold at that price, constitutes a burden on interstate commerce and is, therefore, as to plaintiff in error, violative of the commerce clause of the Constitution of the United States for the following reasons:

[fol. 8] (a) Such gas is residue gas, purchased by Natural for immediate transportation, and immediately transported simultaneously with such purchase, to Natural's markets in other states.

(b) Such residue gas is dedicated and destined to such interstate movement, even before the production of the natural gas of which such residue gas is a constituent, and at all times after such production.

(c) As contemplated by the contract, there is a continuous movement of the gas through Panoma's gathering system, Natural's compressor station, Panoma's gasoline plant, Natural's meter station and Natural's pipeline system, with no break, no period of deliberation, but a steady flow, ending at Natural's markets in states other than Oklahoma.

16

Order No. 26096, insofar as it prohibits Panoma from producing gas from the dedicated acreage unless Panoma obtains 9.8262¢ per m.c.f. for the residue constituent thereof, is, as to Natural, violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) Under the contract between Panoma's predecessors in title and Natural, Natural acquired an equitable estate in Panoma's leases to the extent necessary to preserve its right to receive, so long as gas may be produced from the [fol. 9] leases in paying quantities, 76 million cubic feet of residue from the gasoline produced daily, at the price set forth in the contract. Natural, in order to take such residue gas and transport same to its markets, constructed, in accordance with its contract, a compressor station and pipeline facilities necessary to enable Natural to take and transport such residue gas, at an expenditure of many millions of dollars.

(b) It takes from Natural such valuable property rights for a purported public use without compensation.

(c) The property rights so taken are not, in fact, taken from public use, but for the private benefit of Panoma.

(d) The effect of such order is to require payment by Natural to Panoma of many millions of dollars in excess of the amounts payable under the terms of the contract without justification in any public purpose.

17

Order No. 26096 is invalid in that it operates for the exclusive benefit of a relatively small group of producers of natural gas and mineral and royalty owners in the State of Oklahoma rather than for the prevention of waste or the conservation of natural resources for the benefit of the public generally.

18

Order No. 26096, insofar as it prohibits the production of gas unless such gas be sold in its natural state at the price fixed in such order, or, in the event the liquefiable [fol. 10] hydrocarbons are extracted, that the residue constituent be sold at such price, is violative of the commerce clause of the Constitution of the United States insofar as the residue gas which Natural purchases from Panoma is concerned, because:

(a) The order operates to impose a burden on Natural and, eventually, on the consumers of gas in Illinois, Indiana, Wisconsin, Iowa and Nebraska, to whom gas is supplied through Natural's facilities, for the economic interest and advantage of Panoma.

(b) Since the price which Natural (a natural gas company under the jurisdiction of the Federal Power Commission) may charge its customers in other states for gas sold to them is affected by Natural's cost of service, and since such cost of service includes the cost to Natural of gas purchased by Natural, the increase of the price of gas purchased by Natural from Panoma from the contract price of 6.25¢ per m.c.f. (at 14.65 lbs. pressure base) to 9.8262¢ per m.c.f., aggregating (at the maximum delivery obligation to Panoma) $886,000 annually, will be to the prejudice and disadvantage of the consumers of gas in Illinois, Indiana, Wisconsin, Iowa and Nebraska.

Wherefore, Natural prays that said Order No. 26096 be reversed, set aside and held for naught, and that Natural be restored to all the rights and privileges it has lost by [fols. 11-48] the rendition and entry of such order, and that it have such other and further relief to which it is entitled.

Natural Gas Pipeline Company of America by Coleman Hayes, Warren T. Spies, D. H. Culton, its attorneys by Coleman Hayes.

[fols. 49-50] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

In the Matter of the Application of CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, for An Order Determining the Minimum Price at Which Gas Produced From the Guymon-Hugoton Field May Be First Purchased or Sold

Transcript of Testimony and Proceedings for Appeal

September 25, 1952.

Filed and withdrawn for purpose of filing in Supreme Court.

Tom McMurray.

[fol. 51] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

In the Matter of the Application of CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, for An Order Determining the Minimum Price at Which Gas Produced From the Guymon-Hugoton Field May Be First Purchased or Sold

APPLICATION—Filed January 3, 1952

Come now applicants and allege:

1. That they are the individuals named on Schedule "A" attached hereto, and that each of them own mineral interests in the Guymon-Hugoton gas field located in Texas County, Oklahoma.

2. That negotiated sales of gas from that field have recently been made at a price which is equal to not less than 9.8262 cents at the wellhead for each thousand cubic feet of gas produced, measured at a pressure of 14.65 pounds per square inch, and some of the applicants are receiving that price for a portion of their royalty gas.

3. That the intrinsic value of 1000 cubic feet of gas at the wellhead, measured at a pressure of 14.65 pounds per square inch, for fuel, or any other use for natural gas is not less than ten cents.

4. That under a prior order of this Commission some of [fol. 52] the gas produced from the field is marketed at a wellhead price of 7 cents per thousand cubic feet; that the payment of a higher price therefor will prevent waste and will result in the use of gas which otherwise would not be utilized, and in general, will prevent, or tend to prevent the physical waste thereof.

5. That the sale of this exhaustable natural resource at a price of less than 9.8262 cents per thousand cubic feet, measured at the wellhead at a pressure of 14.65 pounds per square inch causes economic loss both to the owners thereof and to the State of Oklahoma; that an order should be entered which will prevent, or tend to prevent, such loss.

6. That the payment by some purchasers of the price

of 9.8262 cents per 1000 cubic feet measured at the wellhead, at a pressure of 14.65 pounds per square inch for gas produced from some of the tracts in the field, while the gas from other tracts is being purchased at a lesser price, results in discrimination between the owners thereof; that discrimination is prohibited by the statutes of the State of Oklahoma.

7. That in proceedings to enforce the prior order of this Commission fixing the price for gas, it has been asserted that such order is vague and uncertain in fixing the manner in which the price paid for gas in some cases should be [fol. 53] determined; that the order entered herein should define the sale of gas in terms which will, so far as possible, prevent controversies between sellers and purchasers as to the application of the minimum price order, and in terms which will clearly establish the right and duty of each producer to receive, and the obligation of each purchaser to pay, the established wellhead price for gas without deductions for the use or earnings of facilities and plants for handling or working such gas after it leaves the wellhead; that said order should be stated in terms which will clearly prevent discrimination in the amount received for gas between owners and producers of gas who, in addition to wells, own pipe lines and other facilities, and owners and producers of gas who have gas wells only.

Wherefore, applicants pray:

1. That a day be assigned for hearing this application;
2. That notice thereof be given as required by law;
3. That upon said hearing, that an order be entered fixing the minimum price for the sale, purchase and acquisition of gas produced from the Guymon-Hugoton field, couched in language which will clearly prevent discrimination between the several owners and producers of gas from [fols. 54-91] said common source of supply.

Dated 2nd day of January, 1952.

(S.) Vincent Dale, Robinson, Shipp, Robertson and Barnes, By (S.) T. Murray Robinson, Attorneys for Applicants.

[fols. 92-138] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

CD No. 3628.

In the Matter of the Application of CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, for An Order Determining the Minimum Price at Which Gas Produced From the Guymon-Hugoton Field May Be First Purchased or Sold

Transcript of Testimony

APPEARANCES

Rizley, Tyron and Sweet for Panhandle Eastern Pipe Line Co., E. H. Lange for Panhandle Eastern Pipe Line Co., C. H. Hinton for Panhandle Eastern Pipe Line Co. R. M. Williams for Phillips Petroleum Company; Kenneth Heady for Phillips Petroleum Company; Cecil C. Hamilton for Phillips Petroleum Company.

Mark Adams for Northern Natural Gas Company.

C. C. Kuhne for Natural Gas Pipeline Company; Coleman Hayes for Natural Gas Pipeline Company; D. H. Culton for Natural Gas Pipeline Company; Warren T. Spies for Natural Gas Pipeline Company; B. M. Britain for Natural Gas Pipeline Company.

T. Murray Robinson for Applicants; Dale & Dale for Applicants.

L. T. Cramer for Office of Price Stabilization.

Joe Rolston for Cities Service Gas Company; R. R. McCracken for Cities Service Gas Company.

Floyd Green, Conservation Attorney, for the Corporation Commission; Ferrill Rogers, Assistant Conservation Attorney, for the Corporation Commission.

[fol. 139] THOMAS C. BAILEY, called as a witness, being first duly sworn, testified as follows:

Examination.

By Mr. Robinson:

Q. What is your name?
A. Thomas C. Bailey.
Q. Where do you live?
A. Oklahoma City.
Q. What's your business?
A. Petroleum Engineer and Consultant.
Q. What professional schools did you attend, Tom?
A. I went to Colorado University and Oklahoma University. Graduated from Oklahoma University.
Q. What sort of a degree did you have from that school?
A. B.S. Degree in Petroleum Engineering.
Q. What year did you obtain your degree?
A. In June 1942.
Q. What experiences have you had in the practice of Petroleum Engineering since that time?
A. I have been employed by several different employers.
Q. Did you ever work for any conservation agencies?
A. Yes, sir.
Q. Which conservation agencies?
A. I worked for both the Arkansas Oil and Gas Commis-
[fol. 140] sion and the Oklahoma Corporation Commission.
Q. And you are now a general consultant, is that right?
A. Yes, sir.
Q. General practice?
A. Yes, sir.
Q. In times past did you ever make a study of the comparative values of various products which are used for heating?
A. Yes, sir.
Q. About what year did you first commence the study of comparative values of various fuels which you use for heating?
A. Approximately three years ago.
Q. For what purpose did you commence that study, Tom?

A. To show the comparative values between source cost between different fuels.

Q. Did you, as a result of those studies, did that finally result in a publication of an article on that subject?

A. Yes, sir.

Q. Was it in a trade journal of some kind?

A. The Oil and Gas Journal.

Q. And in what issue of the Oil and Gas Journal did that article appear?

A. I don't remember.

Q. You don't recall?

[fol. 141] A. I don't recall the exact issue, no.

Q. Tom, you have been asked by me, representing the Applicants in this case, to make a further study of it?

A. Yes, sir.

Q. What basic sources of information did you use, Tom, in accumulating the data in respect to this problem?

A. I obtained the source cost information from several different sources, the best sources available I could find.

Q. Just what kind of sources of information? What did you do? Where did you go to get your dope?

A. The price of crude oil and the refined products was taken from the published prices of the Oil and Gas Journal. The price on coal was taken from the booklet put out by Mineral Industry Surveys of the United States Department of Interior, Bureau of Mines, Oscar L. Champman, Secretary.

Q. What other sources of information did you use?

A. The information on the cost of natural gas and the yearly average cost of marketed gas, marketed production, of natural gas was taken from the Mineral Year Books throughout the years.

Q. What did you do to bring all this information down to date; what have you done recently towards getting this information current?

[fol. 142] A. I checked it all over again, the old figures, and got the new-up to-date figures for the past three years, as well as prices for those years.

Q. Now, in front of you there is a chart which has been identified as Exhibit No. 11. Who prepared that?

A. I did.

Q. And what is that exhibit depicted to . ow? If you would, now, Tom, go to the board there and speak loud enough so the reporter can hear you. That is a duplicate copy of Exhibit 11 there on the board, is it not?

A. Yes, sir, it's an enlarged photostat of the same exhibit.

Q. All right, now, what is Exhibit No. 11, please?

A. It is a comparative fuel source costs for a million B.T.U. energy content.

Q. Why do you use a million B.T.U. energy content as a common denominator?

A. Most everybody that figures large volumes of fuel discusses it in B.T.U. values, millions of B.T.U.'s.

Q. B.T.U. has the same heating value, whether it's in coal or oil or what, does it not?

A. That's right.

Q. Then B.T.U. is the unit of heating value, isn't it?

A. Yes, sir.

[fol. 143] Q. All right, now, what is the scale which is on the lefthand side of that chart?

A. The scale that shows the unity cost at source, cents per million B.T.U.

Q. Now, what are the various figures which are on that chart as you come across?

A. I arranged these here in order of relative desirability, in my opinion the relative desirability. Coal being the least desirable to industry, residual next, crude oil next, butane next, fuel oil next, kerosene next, gasoline next, and natural gas last.

Q. Tom, what is the source cost there of natural gas?

A. Source cost is 7 cents per mcf, a thousand cubic feet which calculates out to be 6.67 cents per million B.T.U.'s.

Q. That is the average source cost of natural gas, is that right?

A. Yes, sir.

Q. If the average source cost of natural gas is 10 cents per thousand cubic feet, how would it compare in cost to other fuels shown on that graph?

A. It would be less.

Q. What would the cost of gas have to be before it

would be equal at its source to any comparative or competitive fuel?

[fol. 144] A. Coal is 18.4 cents per million B.T.U.'s.

Q. At the source?

A. That's right.

Q. Before you would be purchasing a B.T.U. at the same price as gas as you would be purchasing it from coal, is that right?

A. Yes, sir.

Q. Now, these figures relate to what period of time, Tom?

A. These figures are from January 2, 1952, Mid-Continent costs on crude oil and refined products, and January 2, 1952, United States costs on coal and natural gas.

Q. We offer in evidence—no, wait a minute. Are those figures from which that graph is prepared, shown on any other exhibits?

A. Yes, sir, they are calculated here on Table I.

Q. Then that's marked Exhibit what, the one you are pointing at?

A. Sixteen.

Q. Now, you did prepare Exhibit 16, too?

A. Yes, sir.

Q. Which is the Table of figures from which you have reduced to graphic form in Exhibit No. 1?

A. Yes, sir.

[fol. 145] Q. Now, Tom, is there any conversion figure, or did you prepare anything to indicate the manner in which a conversion from cost of one fuel to its equivalent in value of another fuel, is there a graph of that kind available?

A. Yes, sir.

Q. Now, which one of these exhibits is that, please?

A. Exhibit No. 13.

Q. Now, Tom, for what purpose did you prepare Exhibit 13?

A. Exhibit 13 is a conversion chart for converting fuel costs to energy costs.

Q. Now, what's shown on the lefthand side of the chart?

A. The lefthand side is your fuel cost in dollars per forty-two gallon barrel and coal cost, dollars per ton.

Q. Now, what is the graph across the top of the exhibit?

A. Fuel cost, cents per gallon.

Q. All right, now what's the scale along the bottom?

A. The bottom line is energy cost, cents per million B.T.U. It's also the eqquivalent energy value of one thousand B.T.U. per cubic foot of natural gas, cents per mcf.

Q. Now, what is the conversion line?

A. The conversion line is to convert cents per gallon to dollars per barrel. Lots of times you don't have the fuel listed in dollars, per barrel, and you use the cents per [fol. 146] gallon.

Q. All right, now what are the other lines which run across that graph on which you mark coal and crude oil, and so on?

A. One is coal, one is residual, one is crude oil, one is kerosene, one gasoline and one butane.

Mr. Green: Murray, for the purpose of the record, may I ask one question?

Mr. Robinson: Yes, sir.

Mr. Green: What do you mean by B.T.U., is that British Therminal Unit?

Mr. Bailey: Yes, sir, that's the amount required to raise a pound of water one degree of Fahrenheit.

Mr. Green: That's what you mean by B.T.U.?

Mr. Bailey: Yes, sir.

Mr. Robinson: It's used as a measure of heat energy, is it not?

Mr. Bailey: It is equivalent to about 778 foot pounds. In other words, it's enough energy to lift 778 pounds up one foot.

Q. Now, Tom, just for the purpose of illustration, you have indicated on that graph the manner in which you compared fuels in cost, have you not?

A. Yes, sir. Taking one example here of crude oil, 35 [fol. 147] degree crude oil is $2.55 per barrel. Using this scale on your left, you go up to the point 2.55, and come across horizontally to the right to the intersection of the line marked crude oil, then move vertically down to the base line which reads 43.7 cents.

Q. Does that mean B.T.U.?

A. Million B.T.U. as a cost of energy in the form of crude oil at $2.55 per barrel.

Q. It would be the equivalent of paying 43 cents per thousand cubic feet?

A. Yes.

Q. For gas?

A. Yes, 43.7 cents, yes, sir.

Q. Having a thousand B.T.U. energy equivalent?

A. Yes, sir.

Q. You've got another line up there that shows about kerosene, haven't you,-on that conversion line?

A. Yes, sir. Another one here on kerosene at 9.25 cents per gallon. The scale at the top is used for fuel cost at per gallon that shows 9.25 on it, convert it vertically down until you intersect the conversion line and at that point of intersection go horizontally to your right until you intersect the line at kerosene, move vertically down to the base [fol. 148] line which shows the particular price of fuel at cost of 69 cents per million B.T.U. to be the equivalent of burning gas it would cost you 69 cents per thousand cubic feet.

Q. In other words, if you are paying 9 cents or little better, per gallon for——

A. Nine and a quarter cents.

Q. Nine and a quarter cents for kerosene, you are buying heat which would cost you 93 cents——

A. Sixty-nine cents.

Q. Sixty-nine cents in gas?

A. Yes, sir.

Q. You would pay 69 cents for a thousand cubic feet of gas?

A. Yes, sir.

Q. Having a thousand B.T.U. energy content?

A. Yes, sir.

Q. And buy just as much heat as you could by paying nine cents per gallon——

A. Yes.

Q. Now, Tom, what would be the price—say you would pay 12 cents for kerosene, how much gas could you afford

to buy? How much could you afford to pay for gas rather than pay 12 cents for kerosene?

A. You would pay 87 cents, approximately.

[fol. 149] Q. Do you happen to know what the retail value of kerosene is right now?

A. No, I do not. Source cost is all I have.

Q. Now, Tom, have you sort of followed these comparative costs of fuel over a period of years?

A. Yes, sir.

Q. Have you shown that on a graph form?

A. Yes, on Exhibit 12.

Q. And have you the accumulated supporting data from which you drafted Exhibit 12 as an exhibit?

A. Yes, listed as Exhibit 17.

Q. What is the accumulative data exhibit there?

A. Exhibit 17.

Q. That's Exhibit 17?

A. Yes, sir.

Q. Did you get the data which is shown on Exhibit 17 from the same sources you got your other information you have been talking about?

A. It's the same information I plotted on Figure No. 1. Figure No. 1 represents the last point on these lines.

Q. I know, but where did you get all the basic information which you have accumulated on Exhibit 17?

A. The crude oil and refined products prices comes from [fol. 150] the Oil and Gas Journal. The coal price is the United States average coal price for a year.

Q. Taken from where?

A. Taken from the minerals——

Q. Well, from the same——

A. The same average I mentioned a while ago.

Q. The same source you were talking about a while ago?

A. Yes. Mineral Industry Surveys.

Q. All right.

A. The price of natural gas was taken from the Mineral Year Book.

Q. Now, the graph then which you have up there shown as Exhibit No. 12, that shows the comparative cost of those fuels figures in millions of B.T.U., does it not?

A. Yes, sir, that's cost per million B.T.U.'s for the year.

Q. And if you want to get a million B.T.U. of heat or equivalent of million B.T.U.'s of heat, then over a period of time you could look on that chart and it would give you what it would cost at its source during all that period of time, whether it be gasoline, or kerosene, or coal, or gas, is that right?

A. Yes, sir.

Q. Over there on the left hand side, it starts out, doesn't [fol. 151] it, about 1938?

A. 1939.

Q. 1939?

A. Yes, sir.

Q. And at that time you had variations in costs of the various fuels. Which is the lowest in cost?

A. Natural gas.

Q. Was it any lower at that point much than a couple of other kinds of fuels?

A. It was 4.67 cents per million B.T.U. natural gas in 1939. Coal during the same year was 7.01 cents per million B.T.U.

Q. And that was the next comparative fuel price, was it?

A. Yes, sir.

Q. Fuel in price?

A. Yes, sir.

Q. That was the lowest price fuel other than gas at that time?

A. That's right.

Q. Now, Tom, do you recall about when we had price controls?

A. That's shown on this graph here. It's figured in here from 1941 into 1946, represents the period of Government price controls, so you can see the trends are relatively comparable——

Q. There wasn't much change in those fuels. Oil, for example, sold at the same price, didn't it, all during that [fol. 152] period of time?

A. It sold at the top price allowed.

Q. But that's a flat line across there?

A. Yes, sir.

Q. Then when the controls were lifted in '45 what, in general, happened to the price of all the other kinds of fuel?

A. In '46 when the controls were lifted fuels here it started to jump up and increase every two or three months, and it more than doubled in value, and the same thing happened to refined products.

Q. It doesn't appear to be true of natural gas; have you reached any conclusion as to why natural gas didn't jump up like the others?

A. Because I don't think it's on the free competitive market like the other fuels.

Q. You don't think it is on a free competitive market?

A. That's right.

Q. If it had been on a free competitive market what is your conclusion as regards the study that you made? What would have happened to the price of gas?

A. Price controls. In the first place, it would have been up here higher than coal at 30 cents and it would have been [fol. 153] around 12 or 15 cents and it would have been frozen during the war around 15 cents and when price controls were removed it would have got up around 30 cents per million cubic feet.

Q. Now, you have another exhibit there, No. 15. What's 15?

A. That's basic energy equivalents, natural gas, crude oil, and coal. It's based on specific gravities, B.T.U. per pound energy content and source costs listed for natural gas, crude oil and coal in Table I.

Q. In other words, that is a table which give you the equivalent so you can reduce the costs to B.T.U.?

A. Yes, comparing one with another.

Q. Tom, have you made any comparison as to the amount of energy which each of these various types of fuels furnishes?

A. Yes, for 1950. The year 1950 is the last data available on it.

Q. That is, for the 1950 you have made a comparison of the total amount of energy supplied by each of these products we have been talking about?

A. Yes, sir. That is, not each of the products but basic products, which are natural gas, crude oil and coal.

Q. All right, put that one up there, Tom. This will be Exhibit—what are we about to talk about now?

A. Fourteen.

[fol. 154] Q. Now, what does Exhibit 14 design to show?

A. Designed to show the portion of the total of mineral energy supplied and produced in the United States in 1950.

Q. And used as fuel?

A. Yes, sir, and produced from each of one of these four products, natural gas, petroleum, anthracite coal, bituminous coal,——

Q. Now, what is the larger circle shown?

A. The larger circle shows the amount of energy supplied.

Q. That is, the total energy is represented by the entirety of the circle, is that right?

A. Yes, sir.

Q. And the amount which each of these various products supplies in respect to that total energy is represented by that portion of the circle which it supplies?

A. Yes, sir.

Q. And then there's a smaller inserted circle up there on the left, what is shown by that?

A. That shows the actual dollar income at the source.

Q. So that natural gas supplies twenty percent of the energy and how much is realized in dollars for the supplying of that twenty percent of the energy?

A. It supplied 20.84 percent of the energy in 1950 and [fol. 155] received 5.16 percent of the total dollar income for all the energies at their source.

Q. Then, although it supplied better than twenty percent of the energy they only get about five percent of the income for doing it?

A. Yes, sir.

Q. This will be Exhibit 18. Now, Tom, you have before you Exhibit No. 18?

A. Yes, sir.

Q. What computation is shown on that exhibit?

A. It shows the wholesale cost per million B.T.U. at Chicago, using Mid-Continent source costs and Oklahoma to Chicago transportation rates.

Q. Now, for example, in coal, what sort of transportation rate would you use?

A. The coal listed here is an exception, it's for 12,000

B.T.U. per pound, Central Illinois, bituminous coal, average mine cost, $4.625 per ton, railroad shipping charges from Central Illinois to Chicago, $3.24 per ton.

Q. Now, what is the reason why you made an exception for coal, to get the source as close as you could to Chicago?

A. Yes, sir. Oklahoma coal, very little of it is shipped to Chicago.

[fol. 156] Q. So, the comparison here is between Chicago, Illinois, coal in Chicago and Oklahoma gas in Chicago?

A. Yes, sir. Central Illinois coal in Chicago and Oklahoma gas in Chicago.

Q. Now, I observe you have transportation cost for natural gas at 6.70 cents?

A. Yes, sir.

Q. That's the transportation cost of a thousand cubic feet of gas?

A. No, that's the transportation cost per a million B.T.U.'s.

Q. A million B.T.U.'s?

A. And gas energy.

Q. All right. Now, where did you get the 6.70 cents?

A. That's the average transportation rate received by Natural Gas Pipeline Company of America in 1950 on natural gas transported and sold to other gas utilities.

Q. Now, why did you take the natural gas utilities, why did you take the natural gas rate?

A. Because they transport gas from Texas County—buy gas in Texas County and transport it to Joliet, Illinois, a suburb of Chicago.

Q. Where did you get the 6.70 cents then, as being the cost of such transportation?

[fol. 157] A. I took the total number of dollars paid by Natural Gas Pipeline Company and divided it by the total number of thousand per cubic feet of gas purchased by this company, in the field, or wherever they purchased it, or where it was, and corrected this cost to compensate for—that give me the cost per mcf of gas which was slightly higher than this 6.70 cents, and I divided that by 1.025 to correct for there being one million, twenty-five thousand B.T.U.'s in a thousand cubic feet of gas, to get the cost per million B.T.U.; likewise, I took the money received by Nat-

ural Gas Pipeline Company from other gas utilities, and divided it by the number of thousands of cubic feet sold to other gas utilities, which gave me the price that they received for this gas per mcf.

Q. In Chicago?

A. In Joliet, Illinois. Then, I divided that by 1.025 to get the actual price that they received per million B.T.U.'s, then I took and subtracted the cost per million B.T.U.'s from the price received per million B.T.U.'s to get the cost of transportation rate that they received in transporting this gas.

Q. In other words, you take the field price and then the price in Chicago?

[fol. 158] A. Yes.

Q. Where they sold it wholesale?

A. Yes.

Q. And you just deducted one price from the other and the balance of it would have to represent what is cost them to get the gas to Chicago?

A. Yes.

Q. Now, where did you get these figures?

A. From statistics of Natural Gas Companies for 1950 put out by the Federal Power Commission.

Q. In other words, the figures which they had on file with the Federal Power Commission as to how much gas they had sold in Chicago——

A. I might make a correction on that. All of this gas is not actually sold in Chicago or Joliet, Illinois, but it is sold at points along the road and that's the average price they received for it.

Q. In other words, after leaving Texas County Field, it was the average price as it went on towards Chicago?

A. Whether they delivered it at Chicago or some point along the way, I don't know, but anyhow that's the average transportation rate they received.

A. All right. Now, on the other fuels you took the freight [fol. 159] rates on the fuels, or the pipe line—how did you determine say, for example, kerosene. I observe you got two figures there on kerosene.

A. Kerosene is represented by two figures. One of them is for pipe line transportation and the other one is for rail.

Q. Why did you use both figures?

A. Because so many products use pipe lines throughout the area and part of the products are transported by pipe line rather than by rail.

Q. Goes both ways, in other words?

A. Yes, sir.

Q. Now, Exhibit 19; what's Exhibit No. 19, Tom?

A. It's the same comparative Exhibit to No. 18, except that it gives you the wholesale cost per million B.T.U. for various fuels in Omaha, Nebraska.

Q. Same sort of computation in respect to Omaha, Nebraska, is that right?

A. Yes, sir; using January 2, 1952, Mid-Continent source costs and Oklahoma to Omaha transportation rates—by the way, the coal listed on this one is for a 12,850 B.T.U. per pound, Henryetta, Oklahoma, bituminous coal, average mine cost, $6.75 per ton, railroad shipping charges from Henryetta, Oklahoma, to Omaha, $4.83 per ton.

[fol. 160] Q. Well, let's go back to Exhibit 18, and do this as we go along. Now, what is the comparison between the source costs of fuel plus transportation costs in Chicago on a wholesale basis and the source costs of the next cheapest fuel?

A. Natural gas is the lowest price. It's 16.3 cents per million B.T.U. That's for 0.71376 percent gravity, 1,025 B.T.U. per cubic foot natural gas produced in Texas County, Oklahoma, at a wellhead cost of 9.8262 cents per mcf.

Q. Now, in there you have the source cost of natural gas figured at 9.59 cents, is that right?

A. That's per cost per million B.T.U., which is the same as 9.8262 cents per mcf.

Q. In other words, you figured this fuel cost on this gas at the price which this——

A. This application sets out.

Q. Which the application sets out, as being a price which has been paid in the field?

A. Yes, sir.

Q. So that if you bought gas in the Guymon-Hugoton Field and it can be transported for this differential to Chicago it could be sold in Chicago, bought on that basis, for 16.3 cents——

A. Yes, sir.

[fol. 161] Q. In comparison with 32.8 cents for the closest available source of coal?

A. That's right.

Q. Now, what about this Omaha comparison?

A. The Omaha comparison shows this same gas, same price gas, can be delivered in Omaha at 18.8 cents per million B.T.U. as compared with coal costs of 45.1 cents per million B.T.U.'s.

Mr. Green: You mean million or thousand?

A. Million B.T.U.'s. Everything I have is in million B.T.U.'s.

Q. Now, in all the other types of fuels the comparison is even more pronounced, is that right?

A. Yes, those are the two lowest priced fuels.

Q. Now, what about the comparative fuel prices in Kansas City?

A. In Kansas City, using the same gas and the same Henryetta, Oklahoma, coal, the cost of natural gas, wholesale cost per million B.T.U. is 16.7 cents compared with a wholesale cost of coal of 40.7 cents.

Q. Now, which one of the gas pipe lines, if any, did you use in arriving at this figure of 7.11 cents which is the basic transportation cost?

A. That's the average transportation rate received by [fol. 162] Cities Service Gas Company in 1950 on natural gas transportation, and sold to other gas utilities.

Q. And you arrived at that rate by taking what they had paid for gas and what they sold gas for on wholesale basis in Kansas City?

A. That's right, Kansas City and other points, all gas utilities, of which Kansas City was the furtherest one.

Q. All right. Now, then, what does Exhibit 21 show?

A. Exhibit 21 is the analysis of energy content and source cost of 1950 mineral fuel production in the United States as reflected on Exhibit No. 14.

Q. This is the supporting data for your Graph No. 14?

A. Yes, that's right.

• • • • • • •

[fol. 163] By Mr. Robinson:

Q. Now, based—this analysis, Tom, what would be your conclusion as to whether or not as a use for fuel that gas is worth at least 9.862 cents per thousand cubic feet measured at a pressure base of 14.65 at the wellhead in the Guymon-Hugoton Field. 9.8262, I'll get that price right in a minute.

A. I think the gas is worth considerably more than that.

Q. In other words, it is worth even more than that?

A. Yes, sir.

Q. Assuming that some of the purchasers are paying that price at the wellhead in the Guymon-Hugoton Field, are [fol. 164] they paying any more than the gas is worth in comparison with other fuels?

A. They are not paying as much.

Q. Would any increase in the price of gas tend to conserve gas as a commodity?

* * * * * * *

A. I think that any increase in price would tend toward [fol. 165] preventing waste, also would tend to conserve our gas.

Q. Just almost a mathematical rule that the more you get for it the less you will waste, isn't it, Tom?

A. That's right.

Q. Is there any physical waste of gas that you know about going on in that field?

* * * * * * *

A. There is a small amount.

Q. Of gas being actually wasted, is that right?

A. Yes, sir, blown into the air.

Q. What is the reason for the operators blowing gas in the air?

A. They blow the wells into the air to clean fluid of the well bores.

Q. You are an engineer, I understand; does your engineering experience have to do with the manner in which gas wells can, or ought to be produced?

A. Yes, sir.

Q. Can some of that waste be prevented by different methods of operation?

A. Part of it.

[fol. 166] Q. Is the waste we are talking about, is it in large quantities or more or less small quantities, comparatively, Tom?

A. Small quantities.

Q. We are not talking now about great big quantities of waste of gas, but there is some waste occurring, is that not right?

A. That's right.

Q. Some preventable waste?

A. Yes, sir, partly.

Q. And could that waste be prevented by the expenditure, by a little more expensive methods in operation?

A. Part of it could be.

Q. Now what, in your opinion, would an increase in price of gas, what effect would it have on the correlative rights of the owners of gas in that common source of supply?

* * * * * * *

[fol. 167] Mr. Robinson: All right. What effect would it have on the correlative rights, Tom, of the owners of gas in this common source of supply?

A. The higher price of gas the more acreage would be developed and some royalty or mineral owners along the edge of the field will derive income from production who otherwise wouldn't obtain it if it wasn't developed, if their acreage wasn't developed.

Q. In other words, if you raise the price of gas why there will be wells drilled out on the fringe that would not be drilled at a cheaper price?

A. Yes, the higher price will make a smaller well commercial.

Q. Therefore, the edge wells, the edge of the field will get better grade of development the higher the price?

A. They will develop the edges more, the higher price, [fol. 168] yes, sir.

Q. Now, you understand there is a single reservoir out there, don't you?

A. Yes, sir.

Q. And if these edge wells are not drilled then the owners of the existing wells would simply, eventually, capture the

gas, or some quantities of it, through those wells, wouldn't they?

A. Part of their gas would migrate into the area that was drilled and be produced by the wells that were drilled.

Q. Do you have to have that higher price while the set-up is there for the purpose of marketing gas before it would do any good to drill these edge wells?

A. Well, if you waited until after the rest of the field was produced, and abandoned, you wouldn't have very much of a reserve of gas to go into and redrill.

Q. You wouldn't have very much gas reserve to entice purchasers in there with, would you?

A. No, that's right. It wouldn't amount to very much.

Mr. Robinson: You may cross examine.

Examination.

By Mr. Culton:

Q. Mr. Bailey, your information has been gathered [fol. 169] largely from reading certain documents, has it not?

A. It's the best type of information that I know of that is available.

Mr. Culton: Mr. Reporter, would you read the question. I don't think the witness understood it.

(Question read by the Reporter.)

A. Not largely, partly.

Q. Well, aside from reading the Mineral Year Book and the Report of Bureau of Mines, what did you do to develop the information that you have reflected on these exhibits? And where did you go?

A. I got the base prices and unit costs and converted them into costs per million B.T.U.'s, so that one could be compared to the other.

Q. You got these basic costs from certain documents which you have referred to, didn't you?

A. I got the price on crude oil and refined products from the Oil and Gas Journal, the U. S. cost on coal from Mineral Industry Surveys, put out by the United States Department

of Interior, Bureau of Mines, and I got the price on gas from The Minerals Year Book.

Q. For what year?

A. For all the years up to 1949 and from the Mineral In-
[fol. 170] dustry Surveys from the United States Department of Interior, Bureau of Mines, for the year 1950. All other years on gas I got from the Minerals Year Book.

* * * * * * *

Q. Referring to Exhibit No. 11, which is your figure No. 1, now your first graph there is of coal. Now, what grade of coal is that, and at what location?

A. That's the energy mined cost.

Q. Now, what grade of coal?

[fol. 171] A. Mine run, from the mine.

Q. Was that anthracite or bituminous?

A. Bituminous not anthracite.

Q. Does it include lignite?

A. Yes, sir.

Q. Where did you obtain the price for lignite, at what point of production? Did you get the price of Texas lignite?

* * * * * * *

A. I didn't get the price of Texas lignite but I got the price of bituminous coal and lignite combined, which this is the composite price on for the United States as a whole.

Q. Well, do you have the range between what high and low it went?

A. I just had the average price during the year.

Q. The answer is no, to my question, then?

A. This here booklet might give it, but I didn't get it.

Q. But you didn't, and you don't know what the price on coal ranged, then, from one area to another and from one [fol. 172] time of the year to another? The range of it, from high to low?

* * * * * * *

A. No, sir.

Q. You are unable to tell us the range?

A. I don't have the details broken into any more than the yearly average.

Q. Now, you refer to residual in your second column. Just what does that consist of?

A. Residual, fuel oil No. 6, 12 degree API gravity, residue from the refining of petroleum.

Q. At what location?

A. That's the Mid-Continent.

Q. Mid-Continent price?

A. Yes.

[fol. 173] Q. Is the same thing true as to crude oil?

A. Yes, sir, its 35 gravity, though.

Q. 35 gravity, and you have nothing on the range of the gravity?

A. There has been a constant price on crude oil, and it hasn't varied for the last four years.

Q. It varies in places, though, does it not?

A. It hasn't——

Q. In the United States?

A. It might increase upwards. I haven't heard of it dropping.

Q. Well, you do know that there is a range in price in different places in the United States on crude oil?

A. I saw a figure the other day that gave the average price of two dollars and fifty-two cents.

Q. That's the only answer you can make to my question?

A. It varies a little in different places.

Q. That's what I was asking.

A. Pennsylvania crude is higher than Mid-Continent crude because it has better qualities for lubricating.

Q. Now, how about butane, that also varies during the year, does it not, very greatly?

A. That Butane price is the price received by the West [fol. 174] Edmond Hunton Lime Unit.

Q. When?

A. At the last price they had available. December, I think.

Q. Well, how was the range during the year 1951?

A. It varied.

Q. At least a fifty percent range on that, isn't there?

A. It's a new fuel. It has a big range.

Q. Well now, that has a range of at least fifty percent, doesn't it, in price, during the year?

A. It might range down to 25 percent below that figure.

Q. Well, can you give us the information as to what it was last August?

A. I could get it.

Q. You don't have it available?

A. No, sir.

Q. I notice that I don't see anything about gasoline except a column gasoline without reference to grade. That's ten pound gasoline, isn't it?

A. I explained how I got those prices.

Q. Well, I'm just asking you what kind of fuel you are talking about.

A. Gasoline is sixty gravity, sixty means API, and has a heating value of twenty pounds two hundred and fifty [fol. 175] B.T.U.'s per pound, and hundred twenty-four thousand eight hundred B.T.U.'s per gallon. Cost, at this particular time 10.313 cents per gallon, calculated at cost per million B.T.U.'s.

Q. Well, you do know that 26 pound gasoline is extracted from natural gas, don't you?

A. Yes, sir.

Q. And that that is a considerable industry in this state and also the adjoining producing states?

A. It's raw gasoline, yes, sir.

Q. And that has market prices, does it not?

A. Considerably lower than the refined product. It has to be refined.

* * * * * * *

Q. You do know there has been a great range in the price of natural gasoline, 26 pound gasoline, for example, over the last twelve months, don't you?

A. I don't know how great it is, but I know that it changes.

[fol. 176] Q. Well, don't you know that there's at least 25 percent difference between the summer price and the winter price on it?

A. I would have to check on it to tell you.

Q. Now, you did not use in your chart this 26 pound gasoline, did you, or any other natural gasoline?

A. I have right here what I used in fixing that chart.

Q. Well, answer my question. My question is, did you, in any of your computations use natural gasoline which is extracted from natural gas as a product at gasoline plants?

A. No, sir.

Q. Now, this natural gas, what quality of natural gas did you use?

A. One thousand fifty B.T.U. per cubic foot, 0.625 gravity gas, which has a heating value of 22,073 B.T.U.'s per pound which is equivalent to 1,050 B.T.U.'s per cubic foot.

Q. Now, you got that figure on natural gas, from what course?

A. That's an estimated in average, average in United States.

Q. Where did you get the average?

A. From my own experience in gas fields.

Q. You didn't get that from any of the mineral books, or anything like that?

[fol. 177] A. Their estimate is 1,075, I believe, per cubic foot.

Q. What I'm trying to get at is, are you using an average gas over the United States taken from some source or your own judgment?

A. Taken from all the sources.

Q. Do you have any source material with you from which you obtained the cost of the natural gas used by you? If so, will you present the data that you used?

A. The cost of natural gas?

Q. Yes.

A. I don't have any Mineral Year Books.

Q. You show here 7.0 cents per mcf?

A. Yes, sir.

Q. And from what book did you get that?

A. I'll tell you how I got it. From the Mineral Year Books I got the natural gas price by years, down through the years, up to this point right here, 1951-50, the last available price. I started on this graph right here, through the years, up to this point to '50. That was the 1950 price. From '51 on, here, is estimated, my estimation of the trend of gas since that time.

Q. Where?

A. In the United States.

[fol. 178] Q. Did you go to Texas in making that estimate?

A. No, sir.

Q. Did you go to the Appalachian area in making that estimate?

A. No, sir.

Q. Did you have any information as to the conditions in Texas, or conditions in the Appalachian area which influenced your graph?

* * * * * * *

A. The only thing that might have influenced it was the fact that Texas Panhandle gas price has been increased, too, and the commencement of deliveries to large natural gas pipe lines that have commenced taking gas during the past year.

Q. Did you take into consideration the fact that in the [fol. 179] Gulf Coast area a considerable amount of gas is sold at prices substantially in excess of seven cents?

A. I'm aware of the fact that gas is sold considerably in excess of seven cents. In fact, it's double, or almost more than double seven cents.

Q. You do know that two pipe lines have recently started transporting gas out of the Gulf Coast area, within the last twelve months, do you not?

A. Yes.

Q. And you do know that a considerable quantity of gas is purchased down there at prices higher than this average that you show?

A. Yes, sir.

Q. Now, you use as a basis some figures which I understand you took from the Year Book, as shown on the first column, second column rather it is, on Exhibit 17, is that correct?

A. All except the figure for 1950 which was taken from this leaflet that's put out by the Mineral Industry Surveys, United States Department of Interior, Bureau of Mines, which states the total value at the well of marketed production is $408,776,000.00, and the total marketed production with 6,282,060 cubic feet. That would give you this 6.51 cent price.

[fol. 180] Q. Now, that is true, is it not, as to each of the years from 1939 to 1949 or '50, which you took from the Year Book?

A. The Mineral Surveys.

Q. The same explanation applies to that——

A. I have some other pamphlets here for the last five years for the same thing.

Q. What I am getting at is the same explanation applies?

A. Yes, sir.

Q. In all of those instances, you are dealing with the volumes of natural gas actually produced at the well?

A. The volume of natural gas actually marketed, not produced at the well. It's been more than that.

Q. Well, I thought you referred to price at the well, or something like that?

A. In marketed production.

Q. All right.

A. It was 408,000,000.

Q. I may have misunderstood you a while ago. What was that about the well?

A. The total value at the well of marketed production, is $408,776,000.00. Marketed production of natural gas, increased 6,282,060 cubic feet.

Q. That included all of the constituents of the natural [fol. 181] gas, didn't it, as produced?

A. That's the value at the wellhead.

Q. That's the way you understood it, at any rate, as including all of the constituents of the gas, and it was on that assumption that your table, Exhibit No. 11 was prepared?

A. Yes, sir.

Q. And your Exhibit No. 17 and the chart, Exhibit No. 12?

A. It's the actual price paid for marketed production as reported by Mineral Surveys and this bulletin.

Q. Now, will you glance first to Exhibit No. 18. In that exhibit, you are purporting to compare cost at Chicago?

A. Yes.

Q. Your first item is natural gas?

A. Yes, sir.

Q. There is, in the second column, pounds MM B.T.U.

A. That is the weight of a million B.T.U.'s of each respective fuel.

Q. And in the next column you've got transportation rates per one hundred pounds?

A. Yes, sir.

Q. How did you get that transportation of $12.64 for one hundred pounds?

A. 12.64 cents.

Q. 12.64 cents, I'm sorry. Where did you get that figure? [fol. 182] A. A thousand cubic feet of 9.71376 gravity, 1.025 B.T.U. per cubic foot natural gas produced in Texas County, Oklahoma, weighs 54.33 pounds. Divide 54.33 by factor 1.025 gives you 53.00 pounds, the weight of a million B.T.U.'s.

Q. And how did you get that 12.64 cents?

A. 12.64 cents is calculated from the figure 6.7 cents per million B.T.U.'s using 53 pounds, costs 6.70 cents to transport, a hundred pounds can be transported for 12.64 cents.

Q. Then 6.70 is the basis for the 12.64, is that correct?

A. Yes, sir.

Q. Now, tell us how you got the 6.70 cents as a transportation charge?

A. I can refer to my notes on that. This is Natural Gas Pipeline Company of America?

Q. Yes.

A. In 1950, the Federal Power Commission's statistics on Natural Gas Companies, put out by the Federal Power Commission, gives the figure gas sold to other gas utilities, 16 of them, 16 other gas utilities, at one hundred eighty-seven million, eight hundred and six thousand, two hundred and sixty-six, mcf, and the revenue they obtained from other gas utilities for that oil and gas was twenty-one million, thirty-eight thousand, eight hundred and eighty-[fol. 183] two dollars. Using those two figures the calculated revenue per mcf was 11.20 cents. Dividing by the factor 1.025 to get it on a million B.T.U. basis, gives you 10.93 cents as the revenue for a million B.T.U.'s of energy. The same book gives the amount of gas purchased, by the Natural Gas Pipeline Company of America, to be one hundred ninety-one million, eight hundred ninety-three thousand, six hundred twenty-eight mcf's at a cost of eight

million, three hundred eighteen thousand, two hundred and thirty-four dollars. Using the last two figures gives you a calculated cost per mcf of 4.33 cents. Again using the factor of 1.025 gives you a cost of per million B.T.U. of 4.23 cents. Now, subtracting this cost 4.23 cents from the revenue of 10.93 cents per million B.T.U. gives you the figure that I have there, 6.70 cents per million B.T.U. the actual amount of money received in 1950 per million B.T.U. of energy transported.

Q. You are aware, are you not, of the fact Natural Gas Pipeline Company of America in its rates and charges is regulated by the Federal Power Commission?

A. I have a letter from the Federal Power Commission stating what the rates are.

Q. You are aware of the fact that their rates are regulated by the Federal Power Commission? You are also [fol. 184] aware, are you not, of the fact Natural Gas Pipeline Company of America does not deliver gas to Chicago?

* * * * * * *

A. Here's a letter from the Federal Power Commission in 1949, if you would like me to read it to give you the price.

Q. If you think it necessary in order to answer my question. I'm not asking you anything except an answer to my question.

A. Delivered to—Natural Gas Pipeline Company sells natural gas to its affiliate, Chicago District Pipe Line Company, at a point near Joliet, Polo, Maringo and McHenry, Illinois. Chicago District then resells a portion of this gas to Peoples Gas, Light and Coke Company of Chicago. Now, Natural Gas Pipeline Company and Chicago District Pipe Line Company are wholly owned subsidiaries of Peoples Gas, Light and Coke Company of Chicago.

Q. Does it say anything about Chicago District Pipe Line [fol. 185] Company's rates are also approved by the Federal Power Commission for carrying it from the point of delivery in the Chicago District into Chicago?

A. I've got it figured out here per million B.T.U.'s. I've got it on the same basis here as my calculations, using figures from statistics of the Natural Gas Companies for 1950.

Q. Well, that isn't included in your 6.70 cents, is it?

A. No, it is not.

Q. Chicago District also, during that period, according to your information, sold to other utilities in the Chicago area, did it not, and those prices are not included in your calculations?

A. Yes, in this calculation right here it is.

Q. In the one you put in evidence?

A. I haven't put in it yet.

Q. It's not included in 6.70 cents?

A. No, sir. I can tell you what it is though per million B.T.U., what they got for handling gas.

Q. I'm just asking for an explanation of your exhibit. You also learned, did you not, that these different utilities companies then sold that gas to consumers in the Chicago area?

A. Yes, sir.

Q. And did you reflect in any of your exhibits the prices [fol. 186] paid by the consumers for that gas?

A. I didn't go into it on a retail price basis on any of these.

Q. You know, did you not, that each of those utilities companies was regulated by the Illinois Power Commission, the utilities companies in the Chicago area? That they were regulated by the Illinois Commerce Commission in their rates?

A. I didn't care about that. I wasn't interested in figuring the retail prices. I based all my data on the source costs of these fuels.

* * * * * * *

[fol. 187] Q. Now, you know, did you not, that Natural Gas Pipeline Company rates do not consist or include a rate for transportation?

A. It looks to me like they would set a price at the other end of the pipe line to include the price for transporting it and get an overall profit on it, whatever it amounted to.

Q. Well, you know, did you not, that Natural Gas Pipe's rates to Chicago District, and the other companies along the line, were all rates for the gas, and did not include a separate rate for transporting gas?

A. It seems to me like it would be a rate if they charged that for it.

• • • • • • •

[fol. 188] Q. The only thing you learned in your investigation was that Natural Gas sold 187.8 plus million cubic feet and got twenty-one million, roughly dollars out of it, making the average receipt for that gas 1.202 cents?

A. Yes, or 10.93 per million B.T.U.

Q. That's after you had converted it to one thousand B.T.U. gas?

[fols. 189-198] A. Yes. Now——

Q. You got a price of 10.93 cents as the total amount Natural Gas Pipeline Company received for all the gas it sold, that's correct, isn't it?

A. That's very close to it.

• • • • • • •

[fol. 199] Q. Now, you are somewhat familiar with the situation in Oklahoma, are you not, as to utilization in industry of natural gas?

[fol. 200] A. No, sir, I'm not familiar with the use of the gas. I know where some of it is used.

Q. Well, you know there's a good deal of boiler gas used in Oklahoma, as fuel, don't you?

A. Probably used in electric plants.

Q. And that's quite an industry in this state, is it not?

A. Yes, sir.

Q. And is any substantial amount of the gas from the Guymon-Hugoton Field used for that purpose, in Oklahoma?

A. Most of the gas in Guymon-Hugoton Field is transported out of the state.

Q. At least 99 percent of it is transported out of the state, is it not?

A. I presume that's approximately right.

Q. And where does this gas, that is being used within the state as boiler fuel, come from, what field?

A. I think the Chickasha Fields, maybe Cement Fields, and various small fields and oil fields.

Q. What is the price of gas at the wells in those fields?

A. I don't know the price.

Q. Well, you know what some of the prices that are being paid are, do you not?

A. I'm not familiar with the figures on the various fields.

[fol. 201] Q. Do you know of any sales in any of those fields that are 9.8262 cents?

A. No, sir.

Q. All that you know are substantially under that price, are they not?

A. All except some gas out in Texas County is all I know of.

* * * * * * *

Q. From what other fields in Oklahoma, other than the Guymon-Hugoton Field, is gas exported from the state?

A. I wouldn't know.

Q. Do you know of any?

A. I presume that some of this West Edmond gas is transported.

[fol. 202] Q. You know where?

A. No, sir.

Q. Is there some both exportation and importation by the Lone Star Company down in the lower part of the state, or are you familiar as to that?

A. I know they are hooked up with some of the individual gas wells, I don't know whether they can transport it out of the state or not.

Q. I see. You are not familiar, then, as to whether or not there is any gas being transported out of any Oklahoma field except the Guymon-Hugoton Field?

A. None that I can recall.

* * * * * * *

[fol. 203] Q. You referred to some wasting of gas in the Hugoton Field?

A. Yes, sir.

Q. That was in a cleanout operation. Those operations were all carried on in accordance with the rules of the Commission, were they not?

A. I presume they are.

Q. As far as you know, no one in any such clean-up operations has violated any of the Commission's regulations?

A. Haven't heard of any.

Q. Just which companies now have used excessive amounts of gas, in your opinion, for clean out operations, popped it into the air?

A. Well, some wells have blown more than others. It would be hard to say which companies blew their wells more than others. I really don't know. I know they blow the*n* and that's all.

Q. And you don't know which companies blew them or which wells?

A. No, sir.

Q. And you do not know the price which those companies that blew those wells are receiving for gas?

A. I know the price *of* some of the companies are re-
[fol. 204] ceiving for gas.

Q. Did Republic Natural Gas Company blow any wells?

A. I presume they have.

Q. Do you think they blew more than they should have?

A. I wouldn't be able to answer that. I don't know.

Q. Do you know whether Cities Service Oil Company blew any wells?

A. I presume they did.

Q. Do you know whether or not they used more gas than they should have, in your judgment, in blowing those wells?

A. I wouldn't be able to tell you.

Q. How is that?

A. I wouldn't be able to tell you.

Q. What percentage does this blowing gas bear to the production during the year?

A. I wouldn't be able to make a very accurate estimate on it, but it covers around one percent.

Q. Can you relate that to any particular well at all, the one percent?

A. No, sir.

Q. You stated that in your opinion if the price being higher there wouldn't have been so much gas blown into the air, I think I'm quoting you correctly, is that correct?
[fol. 205] A. Yes, sir.

Q. It's a fact, is it not, that the primary thing in determining the amount of gas which is blown into the air

is governed by the conditions of the well and the amount that is necessary to blow the well in order to clean it out?

A. That's partly so. Also partly depends upon the method of completion, whether the well has tubing installed in it, or not.

Q. And have you made a study on any well from an economic standpoint, showing how a company could afford to change the completion and condition of its well in order to avoid the amount of blowing which is now being done?

A. I made a study.

Q. Don't you, as a matter of fact, think that the Commission through its regulations and through its supervision has done an excellent piece of work in the Guymon-Hugoton Field in holding down the blowing of gas to the very minimum?

A. I think they are doing very good in conservation out there.

Q. Don't you think it's been an unusually good job?

A. Yes, sir.

Q. And don't you think that if any suggestions were made, looking toward further efforts to minimize the waste [fol. 206] of gas due to these blowing operations that all of the producing companies in the Guymon-Hugoton Field would gladly cooperate with the Commission?

A. I think they would, yes, sir.

Q. You were with the Commission, I believe, were you not?

A. Yes, sir.

Q. Did you ever make a recommendation to any of the producers in that field that any changes be made so as to lessen the amount of gas blown into the air in clean-out operations?

A. No, sir, not while I was in the employ of the Commission.

Q. When did you?

A. Not while I was with the Commission.

Q. Well, did you before or since?

A. Yes, sir.

Q. When?

A. I wouldn't know the exact date but I advised people

to install tubing in wells that made considerable amounts of liquid.

Q. Well, who was it you gave that advice to?

A. Butcher-Carrier well.

Q. What well is that?

A. Butcher and Carrier, Oklahoma A & M, town of Blackwell—college well.

[fol. 207] Q. Butcher and Carrier are the operators?

A. Yes, sir.

Q. And that's in which field?

A. Guymon-Hugoton.

Q. And did they accept your recommendation?

A. They installed tubing.

Q. Anybody else?

A. Not that I recall. They haven't asked me.

Q. Beg pardon?

A. I don't believe anyone else has asked me for my advice.

Q. Now, of course, you made no market study of the conditions in the Chicago area for the purpose of determining whether or not if they were required to pay a price higher than the present prices, they would continue to burn gas, did you, in industrial plants?

A. The only comparison I made is shown on Exhibit 18 which shows that lump coal in Central Illinois costs, wholesale, Chicago, 32.8 cents per million B.T.U., which would indicate to me that anybody who had a demand for energy would be glad to buy this gas at 16.3 cents, about half of that.

Q. And why did you use lump coal there?

A. Well, I've got other priced coals here if you like them.

Q. My question is why you used lump coal?

[fol. 208] A. Because I thought that would be a coal that would be in competition with gas as it should be used for home heating.

Q. Is that the only check you made as to home heating?

A. Well, screenings from that same area would cost about three dollars and seventy-five cents per ton compared with this price I have here of 4.625 per ton, which is not a material saving and might cut that cost down on

screening to somewhere in the neighborhood of 25 or 26 cents.

* * * * * * *

Q. Probably my question was not very clear, there was a dash in there. All of your investigation related to the use of fuels for home heating, didn't it?

A. No.

Q. But as for lump coal, you thought that would be used for home heating?

A. Well, I used it and I stated I used it. This price in Chicago is the price of lump coal. If you want it for some other coal, I'll figure it out for you and tell you. I would be glad to.

Q. I thank you very kindly. My next question is, you know that if the supply of gas outside of Oklahoma was [fol. 209] limited to gas for home heating and space heating, the royalty owners in the Guymon-Hugoton Field would not have any outlet for their gas, don't you?

A. I understand there is many permits asking for connections for home heating in Chicago, Minneapolis, St. Paul, and all down the line.

Q. And what part of the year do they use gas for home heating?

A. Mostly in the winter time.

Q. Then the farmers would have no royalty during the summer time, would they?

A. The gas companies could get some old fields, use it for storage and during the summer months they could transport gas to this storage and dole it out in the winter.

Q. But unless they do that, the farmers in the Guymon-Hugoton Field would have very little outlet for their gas, wouldn't they?

A. If they got a comparable price for what it ought to be they would use as much for the little gas they sold as they get for the whole lot they sell now.

Q. Where can they get it?

A. At the price of 25 or 30 cents where it ought to be.

Q. You have talked to no users of fuel in any of the [fol. 210] markets referred to, to see how much gas they would take if the gas price were two or three cents higher, have you?

A. I haven't tried to sell it, no, sir.

Q. You know most of the gas which is transported throughout the year, even during the winter time, is used in connection with manufacturing companies and concerns of that kind, don't you?

A. I probably could find out what percentage.

* * * * * * *

Q. Well, in the report of Commissioner Wimberley and Commissioner Smith, I find this statement: "Natural gas is used chiefly for industrial purposes which accounts for nearly eighty percent of its total marketed production." From your investigation, are you——

A. Here's a figure right here that gives the industrial users out of a total of gas sales was five billion, six hundred sixty-seven million, four hundred thirteen thousand cubic feet; one trillion, one hundred thirty-three million, two hundred twenty-nine thousand cubic feet was used by in- [fol. 211] dustrial users.

Q. One trillion out of how many?

A. One point three trillion out of five point six. Other gas utilities took the bulk of it, three point five trillion which possibly a lot of that went to industrial users.

Q. Well, at any rate, as far as your investigation goes you have found nothing to conflict with the estimate made by Commissioner Wimberley and Commissioner Smith that eighty percent of the total gas marketed in the United States is used for industrial purposes?

A. Not without further study.

* * * * * * *

Q. Well, the Guymon-Hugoton Field, for a number of years, had a very small market, didn't it?

A. Yes, sir.

Q. And other pipe lines came into the area and increased [fols. 212-217] the volume of gas going out very substantially, didn't they?

A. When they come in.

Q. And as each new company came in there has been an increase in the contract prices, hasn't there?

A. Slight increases in contract prices, yes, sir.

Q. You have heard of none of the producers who were losing money in producing this gas, have you?

A. I don't know about the economics, but I imagine there is plenty of wells out there that are non-commercial where they don't get the cost of their wells back.

Q. Well, that's because gas wasn't in the ground, or wasn't deliverable from the well?

A. Because the price of gas is not high enough to get back what they paid for it.

Q. And that's true in any field, is it not, regardless of the price of gas?

A. The higher the price the less it would be developed.

Q. That's right, but the economics of the project takes into consideration both the income and the outgo, don't they?

A. Maybe so.

Q. And people take into consideration present prices when they decide to drill a well, ordinarily, don't they?

A. Well, they probably think about the future also.

* * * * * * *

[fol. 218] A. I would have to know how much the production was and the price they paid for it.

Q. Do you own any interest in wells in Texas County?

* * * * * * *

Q. Well, which ones?

* * * * * * *

[fol. 219] A. Panoma Corporation, Cities Service Gas Company, Skelly Oil Company, Stanolind Oil and Gas Company; American Gas Corporation, Panhandle Eastern Pipe Line Company. I think that covers it.

* * * * * * *

[fol. 220] Q. The royalty owners of the Guymon-Hugoton Field are getting the benefit of much more transportation of gas now than they were five years ago, aren't they?

A. Yes, but they are using up their reserve faster and it

won't last as long as it would at the rate they were paying five years ago.

Q. Well, do you as a royalty owner, want to leave your gas in the ground?

A. I'm not a royalty owner.

Q. Or as part well owner, do you want it produced?

A. I would like to conserve it for a while until the price gets up where it ought to be.

Q. By "conserve" you mean "hoard"?

A. I mean it hadn't ought to be produced until people who want to buy it will pay the price that it is worth.

Q. And you do mean that you do not want your property to produce until you get a certain price for it?

A. I would rather keep it—until I can get what it's worth.

* * * * * * *

[fols. 221-233] Chairman Bond: Do you know how much money is going to be returned to the royalty owners and parties in interest out there by reason of the Commission fixing a wellhead price of seven and a half cents, or seven cents?

A. It amounted to a very large sum.

Chairman Bond: Do you know how much money has accumulated during these lawsuits?

A. I believe it's five or six million dollars. Something like that.

Chairman Bond: Isn't it nearer sixteen million dollars?

A. It might have been.

Chairman Bond: And have you read the estimate of the geologists or petroleum engineers on how much they would be saved during the life of the field?

A. I haven't read that estimate but I presume there's quite a bit.

Chairman Bond: You haven't heard them say it would be two hundred million dollars the Commission would have saved the people out there during the last life of this field, have you?

A. That would be easy to calculate.

* * * * * * *

[fol. 234] Examination.

By Mr. Culton:

Q. Mr. Bailey, I think this is in the record, no doubt, but you talked some yesterday on cross examination about the physical waste of gas in the Guymon-Hugoton field?

A. Yes, sir.

Q. Limited it, I believe, to that gas that was used in cleaning out the wells?

A. Yes, sir.

Q. Now, is there any different method used now than there was prior to January 1, 1947, in connection with that?

A. Some of the wells, including Panhandle Eastern's wells, which are being completed now, the tubing installed at the time of completion, this installation of tubing allows production of gas taken from the well to carry condensed water, and other gas liquids, that collect at the bottom of the [fol. 235] reservoir to the surface while the well is being produced and eliminates the necessity of a lot or the greater part of blowing of the wells into the air to remove this liquid.

Q. Well, those operations are all pursuant to the orders and directions of this Commission?

A. They are all in compliance with orders of the Commission.

Q. How's that?

A. I presume they are all in compliance with the orders of the Commission.

Q. Of course, you are not inferring that the Commission would promulgate any orders that would waste gas out there, are you?

A. I am inferring that it might be possible that the higher price of gas might cause you to install tubing in a few of the wells.

Q. Well, are you inferring that the companies in that operation ought to follow some other order or direction than that promulgated by the Commission?

A. It doesn't order the installation of tubing, in the wells. It is merely a matter that is undertaken by the operators as a measure to conserve part of the gas that is wasted by blowing it away.

Q. What I'm trying to get at, are you leaving the inference here that the Commission is derelict in its duty out [fol. 236] there in respect to the way they have handled that operation?

A. No, sir, not at all.

Q. Now, I don't understand graphs and charts and lines very well. Do I understand your testimony to mean that if natural gas is sold out of the field at a price for fuel in connection with other comparable fuels, that any price fixed, any minimum price fixed, would be wasteful utilization of that gas unless they did compare with prices on other fuels?

A. The cheaper the price of gas the more would it be used in wasteful operations. Otherwise, we might obtain our energy from inferior qualities of fuels, such as coal, slack coal, and such.

Q. Are you trying to say now that it hadn't ought to be used for those things that coal and these other fuels are used for, is that what you're basing it on?

A. I think that natural gas can be used for any use whatsoever so long as the user will pay the price that the fuel should be worth.

* * * * * * *

[fol. 237] Q. Well, what would the price have to be now in the Guymon-Hugoton Field if you as a producer or I as a royalty owner would have to get in order to bring it up to a price comparable to these other fuels?

A. I already stated before that if natural gas at the source at the wellhead was in free, open and competitive market the same as other fuels and had been that way for the past ten years the price of natural gas in Texas County, Oklahoma, at the wellhead today would be in the neighborhood of twenty-five to thirty cents per thousand cubic feet.

Q. Well, I know, but of course that's—I'm not asking about that. What I'm trying to find out under the situation as exists what price would we have to get out there before its wasteful utilization of it, when you compare it with these other fuels?

A. I just brought that out this morning that if the Commission set the price I don't presume to tell them what to set it at, because they know more about it than I do and they

are going to hear testimony from several other witnesses. But from my viewpoint of it and my study of the past trends and fuel costs in the nation, I believe that their setting a price today of 12.64 cents per mcf would not work any more [fol. 238] hardship on gas purchasing companies than at setting the price at seven cents in 1947.

Q. Well, I don't care what kind of hardship it works on anybody. The Commission, I take it, are not interested in whether it's going to work a personal hardship on me or you. They probably are as our personal friends, but they don't care as a legislative body here about what I get or what you get. I'm not talking about that. I'm talking about what price the Commission ought to set on gas in the field out there as you have compared it to other fuels, coal, so that under your theory of the thing, it wouldn't be wasteful utilization. That's all we're interested in and I take it that's what the Commissioners are interested in.

A. Under the existing circumstances, considering the fact that the price of gas has been priced at a low level for the past ten years by controls, I believe at the present time that the price of gas should be set at 12.64 cents per mcf would not cause any large scale reconversion of users who use natural gas at present.

Q. That's just what you said before but how would that compare with other fuel prices?

A. It would still be too cheap, too low.

Q. Well, that's what I'm trying to find out. What ought [fol. 239] it to be set, under your testimony, you are comparing it with other fuel prices, what the price ought to be now set.

A. I'm not telling them they ought to set the price now at that because I feel setting a price at the figure I would quote to you would be too much of a change all at once. It might throw your system out of order.

Q. But it ought to be twenty-five or thirty cents, is that what you want?

A. That's what I set it awhile ago. I set it on a graph.

Q. Do you think the Commission ought to set and not make changes in conserving this valuable gas out there if it's being wasted, at the price you are fixing here?

A. I might say that if the Commission sets a price at that figure it will cause a lot of the market gas in Texas County to be supplied by gas purchase in Texas, but if this Commission has the authority to set the price in the whole Southwest and set it at twenty-five to thirty cents, it would be all right, it would be good.

Q. Well, that wouldn't be based upon wasteful utilization of gas in Hugoton Texas County Field, you would be fixing that on prices that are being paid around Kansas, Texas and other places. Now, in order to conserve gas, do you think that the price ought to be fixed on all of it or just one-eighth of it?

[fols. 240-241] A. I think the Commission in the State of Oklahoma has a rule that if you pay a certain price for one-eighth of the gas you would have to pay the same price for the rest of it. I don't believe you can pay two prices in the same field.

Q. Now, the Commission, of course, would fix the minimum price in the Guymon-Hugoton Field. Some of these producing companies produce their own gas. Would it be your opinion that they ought to have a minimum price on their own produced gas?

A. I would think they would.

* * * * * * *

[fols. 242-277] Q. Now, you said something a while ago in connection with the installation of tubing by the Panhandle Eastern and others in those wells. Has that any connection with cleaning up the wells? Does that tend to increase or decrease the amount of gas?

A. The installation of tubing tends to decrease the amount of gas.

Q. Well, the waste will be less now under this operation than it was before they started using tubing?

A. Yes, if they install tubing in all the wells it would help.

Q. And if that has happened as far as Panhandle Eastern is concerned, then the waste is not as much physical waste, as much as it was prior to 1947?

A. That's right. Panhandle has found that installation of tubing in some of their wells has decreased the amount of waste.

* * * * * * *

[fol. 278] Mr. Robinson: What is your name, please?

A. P. McDonald Biddison.

Q. Where do you live, sir?

A. My residence is Jacksonville, Florida. I maintain an office at Tulsa, Oklahoma.

Q. In what business are you engaged?

A. Consulting Engineer, specializing in natural gas and petroleum.

Q. What is your educational background?

A. I am a graduate of Kansas State College with a Degree of Bachelor of Science in Electrical Engineering.

Q. When did you drift into the matter of specializing in gas engineering?

A. I've been engaged in the natural gas petroleum industry since 1905. I've been in consulting work since 1928.

Q. Briefly relate your experience and background, sir.

A. My first work in the natural gas industry was with the Kansas Natural Gas Company, now part of the Cities Service organization. Then I was with the Columbia Gas & Electric Company on construction of their system from [fol. 279] West Virginia into Cincinnati in 1908 and '9. I was then with Ohio Fuel Supply Company, Columbus, Ohio, now part of the Columbia system, on construction work. Then I was with the Texas Company at Port Arthur for a year, in 1911, on refinery construction. Then back with the Ohio Fuel Supply Company until 1919, as their Construction Engineer. I then had two years in Mexico on oil lines, oil pumping stations and oil loading station construction. That engagement was finished in 1921. I then became manager of some properties controlled by H. D. Walbridge & Company, comprising production properties in the Monroe Field of Louisiana in what is now the Carthage and Wascom areas at the Louisiana-Texas State Line and, in this connection, I built a carbon black plant, some gasoline plants, some transmission lines, and reported on several projects, some of which were later constructed but not by the group I was working for. During this period I was also Consulting Engineer to the Dallas Gas Company and affiliate gas company at Dallas, Texas. These properties were sold in 1928 and I then opened my office at Monroe, Louisiana, as a Consultant. Shortly afterward I reported on a project for

a natural gas pipeline into Salt Lake City, which was constructed on the basis of my report. I participated in negotiations for the line from the Monroe Field to Memphis [fol. 280] and I became Consultant to the Southern Natural Gas Company during the construction of their system from the Monroe Field to Birmingham, Atlanta and other intermediate cities. In 1931 I moved my office to Dallas, Texas, and practiced there until 1942. Late in 1942 I became employed in the Office of War Utilities at Washington and in 1943, in the Spring, I opened my office in Chicago. About two years ago I moved my office to Tulsa. I have done work for most of the major gas companies and for some of the oil companies. I have done governmental work during the first World War on the helium projects. I was Consultant to the U. S. Bureau of Mines on war gases during that period.

Q. Mr. Biddison, has your experience been broad enough to take you into every phase in the business of producing, transporting and marketing gas?

A. Yes, sir, and in the utilization.

Q. To what extent are you familiar with the Guymon-Hugoton Field which is under discussion in this matter?

A. Well, I have not, personally, spent much time in the Field, but I am familiar with the area. I have done work on estimates for pipelines and for gathering systems in which the productivity and the amount of reserves in the Guymon-section of the Hugoton Field were a fraction.

[fol. 281] Q. Have you any present contact with any prospective purchaser of gas from that area?

A. Yes, at the present time I am engaged by the Colorado Interstate Gas Company in a program to connect up some additional reserves to their system, and they are a prospective purchaser of natural gas any place within quite a wide range.

Q. Have you been present in the courtroom since this trial started?

A. Yes, sir, continuously.

Q. You've heard all the testimony which has been introduced by Mr. Bailey as a Statistician in developing the disparity in price paid gas and other competitive fuel commodities, have you not?

A. Yes, sir.

Q. Have you made any study of your own in respect to the comparative values of these particular products which may be called their intrinsic values for fuel use?

A. Yes, not only in connection with this particular problem, but back over the years in connection with studies of possibilities of pipelines to various communities I have had to study these relative values of fuels as retailed in the prospective markets for natural gas.

Q. Have you ever been called upon by a consumer or a [fol. 282] user of heat energy to make recommendations as to the kind of fuel which should be employed?

A. No, I've been on the other side of the fence in dealings of that nature, where it was my function to demonstrate the advantage of natural gas over the other fuels.

Q. In connection with your studies and your activities on the other side of this fence, what conclusions have you reached over a period of years as to the usability of gas as a fuel as compared to these other commodities?

A. As a general proposition, natural gas as a fuel has inherent advantages over other fuels of any type, whether they are liquid fuels or solid fuels. One of the advantages is that the commodity is delivered when required and at the rate required by the user, thus eliminating any necessity for storage facilities.

Q. If natural gas and coal cost, say, the same amount of money per unit of heating energy, which of the two commodities would most of the users or consumers elect to take if they had an equal opportunity to take both?

A. They would take natural gas.

Q. So that, in your opinion, natural gas has, at least, an inherent value for use as fuel equal to that of coal?

A. In excess of that of coal.

[fol. 283] Q. So that if we make a comparison between coal and natural gas in actual cost of the two commodities delivered to the consumer, you would say that the purchaser of natural gas is getting a bargain for any amount of money which the fuel would cost him less than that of coal?

A. I say yes to that, with one exception that comes to my mind and that is this—that as a boiler fuel in certain types of boiler installations, the super heater may be so arranged that you will get a little higher efficiency burning powdered

coal that you will burning natural gas, and that is the only exception which I know to that general rule.

Q. Were you acquainted, generally, with the conditions which existed in the Guymon-Hugoton Field back in the latter part of 1946, when this price of natural gas was under consideration in that Field by this Commission?

A. Yes, sir.

Q. Are you acquainted, generally, with respect to the marketing conditions which exist out there, now?

A. Generally so, yes.

Q. In your mind have conditions changed any in respect to the price at which this commodity—have conditions changed which have an impact on what that commodity should sell for in the Field?

[fol. 284] A. Yes, sir.

Q. What changes have taken place since 1946?

A. Since 1946, on all the major pipeline systems drawing gas from that area and the area adjacent to it in that same and in the Panhandle Field of Texas, generally, there has been a tremendous increase in the requirements of the markets served by those pipelines. An increase so great that the pipeline companies have had great difficulty in maintaining capacity to meet the market requirements and are now having difficulty in obtaining sufficient gas to meet the requirement which they have provided and are still faced with increasing loads which will entail further requirements of capacity and further requirements of reserves to meet the capacity.

Q. Has there been any change in the cost of producing the commodity?

A. Yes, there has been a very material change in the cost of production.

Q. In which direction has the cost changed?

A. The cost of production has materially increased.

Q. Are you acquainted with the prices of gas which are being paid in that Field?

A. Generally so, yes.

Q. Do you know if, during the interval we are talking [fols. 285-286] about from '46 to '47, any new contracts for the purchase of gas had been entered into?

A. Yes. One important contract was that of Northern

Natural Gas Company for gas from what was called the Vernon Taylor acreage, which I believe now is American Gas Production.

Q. Are you talking about the American Gas Production Company?

A. I think that's the name that went with the acreage known as the Vernon Taylor acreage. I'm not certain of the name on that, but I have the block in mind that's known as the Vernon Taylor block.

Q. Are you referring to the contract between the Northern Natural Gas Company and the American Gas Production Company?

A. Yes, sir.

Q. Do you happen to know what the price fixed for gas in that contract was?

A. I am informed 11 cents at a 16.4 pound base.

* * * * * * *

[fol. 287] Q. You have heard there was a contract negotiated for that price?

A. Yes, sir.

* * * * * * *

Q. So that if the Commission should, by order, set a minimum price in the Field of 9.8262 cents as we have it worked out for gas bought or purchased at the wellhead in that Field, measured at a pressure of 14.65 pounds per square inch, at least as to that purchaser they would not be required [fol. 288] to pay any more money than they are now paying?

A. That's right.

Q. In your opinion, is that price in excess of the actual value of the gas for the uses for which gas is suited?

A. No, sir, it is not.

Q. In your opinion, is that price in excess of the price which could be obtained for gas from that Field, if the gas were not already committed?

A. No, sir, it is not in excess of the price that could be obtained if the gas were not already committed.

Q. What price do you think gas could probably be sold for in that Field if it were not thus committed?

A. Ten cents per thousand cubic feet or more at 14.65 base.

Q. Do you have any general acquaintance with gas purchases throughout the country which would indicate to you that the purchasers of gas believe that it has at least that value?

A. Yes, sir.

Q. What sales and purchases do you have in mind?

A. I supervised the gas purchasing program for the pipeline that was recently finished and went into operation in the Fall of 1951. We bought our gas on the Gulf Coast area. We started purchase negotiations in the summer of 1947, with the idea in mind that since a great deal of gas in that [fol. 289] area and in the Carthage Field of Texas was being sold at 5½ cents or less, we could buy an ample supply for six cents at 16.4 base. We never acquired a foot of gas at this price, and not until we set a price of 9 cents per thousand cubic feet at 16.7 base with an escalator clause of one cent per thousand each five years and a favored nation clause under which we would meet the price set by any other producer in the area, were we able to buy any gas.

Q. Do you know of any contracts which long line gas companies, any offers purchased by long line gas companies for prices, say, in the range of 15 cents per thousand cubic feet?

A. Yes, and the price is reported to be agreed to for that gas to go to Canada from the Humble Oil Company, is of the order of the price fixed by Humble in 1948 at the time myself and associated had conversations with them about gas. However, at that time we did not feel that the 15 cent price, which is the price I am talking about, was justified and, furthermore, Humble at that time said their policy was to be that they would not sell one foot of gas for movement in interstate commerce.

Q. Mr. Biddison, is gas a replaceable commodity or is it an irreplaceable commodity?

A. Well, it could be replaceable at a slow, slow rate, but [fol. 290] it doesn't make any difference to anybody now living.

Q. Then, for all practical purposes we can say that it is an exhaustible natural resource, is that right?

A. Yes, sir.

Q. If we first assume that the State of Oklahoma has an interest in preserving natural resources or seeing that they are—the state and its citizens realize its value therefor, if it can be prevented, what action do you think the state ought to take to prevent sales of gas from that field for less than 9.8262 cents?

A. I think to protect the interests of the State of Oklahoma and its citizens that the Commission ought to use such powers as it has to provide a price for gas produced in Oklahoma that will produce the maximum revenues consistent with a policy of maintaining markets.

Q. And do you believe that a price of 9.8262 cents would adversely affect the position in respect to markets?

A. No, sir, I do not.

Q. And do you think the gas which is being sold from that field is worth at least that amount of money per thousand cubic feet?

A. I do.

Q. Now what, in general, is the effect of increased prices [fol. 291] for gas on the question of actual physical waste of gas?

A. Its general tendency is to prevent waste.

Q. That is, the more money you get for it it's just natural less of it will be wasted?

A. Certainly.

Q. In this particular field, will there be encountered what they call thin acres?

A. Yes. There is some thin acreage on the eastern side of the Hugoton field that some price might produce what we call commercial wells and at some other price might not be drilled at all.

Q. Well, will an increase in the price of gas, generally, have a tendency to see that the field is fully developed?

A. Yes, sir, it would.

Q. What will be the effect of more complete development upon the correlative rights of the owners of that common source of supply?

A. Can you give me that question again?

Q. What effect will the increase in the price of gas have

upon the correlative rights of the owners of that common source of supply?

A. Well, it would tend to produce a revenue to the owners of acreage that are on the marginal areas of the field which [fol. 292] they would not otherwise get, because at the lower price the wells would not be drilled. Of course, if the wells in that marginal acreage are not drilled a landowner in that area receives no gas revenue and the gas under his acreage tends, to some extent, to migrate to areas where production takes place.

Q. That is, until he gets the well, he doesn't participate in the gas even though there is gas under his land?

A. That's correct.

Q. So, in general, the more wells that are drilled the better the correlative rights of the owners of the common source of supply would be protected?

A. That's right.

Q. How, could that thin acreage be later developed, say, after this field or the better part of the field has been produced and exhausted and maybe in years to come the price goes higher and higher?

A. Well, if the price goes high enough, eventually it could be produced but there's a question whether at the time the price becomes high enough there will be enough pipe line facilities in there to go out and reach it. What will happen a great many years from now is pretty hard to predict.

Q. Well, let's paraphrase it——

[fol. 293] A. That's hard to predict.

Q. Well, let's paraphrase it then. This gas, also, has to be loaded while the tide's in, doesn't it?

A. That's right.

Q. Mr. Biddison, in what manner would the owners, producers of that gas, be adversely affected if any, by an increase in the wellhead price of that field? Do you visualize any manner in which detriment will occur to the State of Oklahoma or to the citizens of Oklahoma by the increase in this lower price?

A. I can see only advantages to it.

Q. Then the Commission having authority to set a price, do you know of any reason why they should not do so?

A. I do not.

Mr. Robinson: You may cross examine.

Examination.

By Mr. Culton:

Q. Mr. Biddison, you refer to the fact you are now trying to obtain reserves for Colorado Interstate Gas Company in the Oklahoma field or elsewhere, I believe?

A. That's right.

Q. Is any of that thin acreage that you referred to available for lease now?

[fol. 294] A. I think there is some of it now, Mr. Culton.

Q. Have you taken any leases on it?

A. No, sir.

Q. Do your proposals that you are making in your effort to obtain additional gas supplies for Colorado Interstate contemplate a definite price either through the period of the contract or through escalator clauses?

A. We have in mind that there will be escalator clauses in it.

Q. But you do have in mind the price fixed in the contract is what you will build your estimates in the future on?

A. That's correct.

Q. And it has been your practice in all your former estimates for the construction of different pipe lines to follow that same policy and build your products based on the estimates of gas available under your commitments and the prices that are set forth in those commitments?

A. That's correct.

Q. That is a necessity in the business, isn't it?

A. Yes, sir.

Q. You must have dedicated reserves before you construct your pipe lines so as to determine whether or not you will be able to make such a showing that will enable you to get a [fol. 295] certificate from the Federal Power Commission for the construction of pipe lines?

A. Yes, sir.

Q. And in that showing you show the prices you expect to pay and the reserves which are dedicated to your pipe line?

A. Yes, sir.

Q. Sometimes, you have raw gas dedicated and sometimes you have gas with guaranteed B.T.U. content dedicated?

A. Yes, sir.

Q. Now, you have done work in the past for Natural Gas Pipe Line Company, Cities Service Gas Company and for Panhandle Eastern Pipeline Company?

A. Yes, sir.

Q. And you, also, have done some work for Northern Natural?

A. No, sir.

Q. You did some work for Phillips, however, in connection with the market for Phillips to Michigan-Wisconsin Pipeline Company?

A. Yes, sir.

Q. You are familiar with the contract between Phillips and Michigan-Wisconsin Pipeline Company?

A. Well, I have been.

Q. You, at this time, know the general contract provisions?

[fol. 296] A. I know them, generally, yes. I can't quote prices on them at the moment.

Q. But what I was getting at, in those contracts there was a definite designation of the reserves and designation of the price?

A. There was a definite designation of reserves. The price, however, was tied to the commodity index of the Bureau of Labor's statistics.

Q. There was a variation from the price though——

A. Well——

Q. You had the base price——

A. You had the base price——

Q. And that price rises and falls in accordance——

A. The price varies with that index so the price in the final analysis is the base price as modified by the index.

Q. That's what I was getting at?

A. Yes, sir.

Q. Now, you know that the rates of Natural Gas Pipe Line Company, the rates Panhandle Eastern Pipeline Company, the rates of Northern Natural Gas Company, the rates of Cities Service Gas Company, and the rates of Michigan-

Wisconsin Pipeline Company for all gas sold for a resale by them other than in the states of production are regulated by [fol 297] the Federal Power Commission?

A. Yes, sir, I have cried with most of them.

Q. That's one case where you and the pipe line companies are in full accord, isn't it?

A. At least once.

Q. You and they both are in disagreement with the philosophy——

A. Yes, sir.

Q. —of the regulations?

A. Yes, sir. Some portion of that philosophy.

Q. The portion which I have reference to is the use of depreciated original cost as the basis and the only basis?

A. I quarrel with that, but I quarrel more specifically with the provision of the Natural Gas Act, which I think is inexcusable and entirely unwarranted, yet it has been interpreted literally by the Power Commission; whereas, in another portion of the Act, they just simply say the Act doesn't mean what it says. Now, the part I quarrel with is that provision under the Act that says the object is to secure the lowest possible prices for gas to the ultimate consumer——

Q. And you and the pipe line——

A. So that, tied in to the depreciated rate base, accounts for a great deal of difficulty that the gas companies, pipe line companies, are in today in meeting the demand of a [fol. 298] market that seems to have no limit.

Q. You and the pipe line companies are in full accord as to this agreement with the philosophy of that portion of the Natural Gas Act?

A. I believe we are.

Q. Then, you are also in accord with the fact that there is, logically, a conflict between that provision you have referred to and the provision which provides that rates shall be just and reasonable?

A. Yes, sir.

Q. So that, as far as the philosophy of the Natural Gas Act which is causing most of the trouble in the natural gas industry, you and the pipe line companies are in full accord?

A. Yes, sir.

Q. And you think that those same provisions are against the interest of producers as well as pipe line companies?

A. I think they are against the interest of the producer and the transmitter, the distributor and the consumer.

Q. Everybody involved?

A. From top to bottom.

Q. And in that particular, as far as you know, the pipe line companies and you are in full accord?

A. I think we are.

[fol. 299] Q. Now, you realize, do you not, that the prices which are charged by these companies, particularly on the sales or resales, are charged without relation to the purpose for which the gas is used by the purchaser, or for the purpose for which it is sold by the distributing companies, say?

A. Well, that's not quite a correct statement of it. In general, that's true, but if some of these pipe line companies have rates for some specific characters of use.

Q. Well, in respect to Natural Gas Pipeline Company it's fully true, isn't it?

A. I believe it is; I believe that's right, with respect to Natural Gas Pipeline Company. As I recall it, their rates are strictly demand and commodity combination.

Q. Makes no difference what the distributing company sells it for or what purchasing distributing company uses it for Natural Gas Pipeline Company gets the same price?

A. I believe that's correct.

Q. You are aware of the fact, are you not, that prior to 1938 the rates which Natural Gas Pipeline Company charged for the gas which was sold in interstate commerce for resale were far in excess of the rates that's now charged as fixed by the Federal Power Commission?

A. Yes, sir.

[fol. 300] Q. That same thing is true, is it not, as to the rates of Panhandle Eastern Pipeline Company?

A. Yes, sir.

Q. It is true as to the rates of Northern Natural Gas Company?

A. Yes, sir.

Q. It is true as to rates of the Cities Service Gas Company?

A. Yes, sir.

Q. So that these various pipe line companies were required by order of the Federal Power Commission to reduce their rates from the prices which were then being received?

A. Yes, sir, they were.

Q. And at that time the natural gas companies all insisted that there should be some allowance made for the real fuel value of that gas as compared with other fuels?

A. Yes, sir.

* * * * * * *

[fol. 301] Q. You know, do you not, that the addition of increased costs of gas over and above contract prices that are paid, which are beyond those estimated in former proceedings before the Commission, cannot be based on by the pipe line company through the distributing companies without proceedings before the Federal Power Commission?

* * * * * * *

A. I think that that would depend upon the immediate [fol. 302] status of the particular pipe line company with regard to their earning rate, but in general I would say that was a correct statement because most of them are in the position now of having to ask for rate increases.

Q. Without respect to that?

A. That's correct.

Q. You do know that there is a hearing of this nature before the Federal Power Commission now by Northern Natural, one by Panhandle Eastern and there is a rate proceeding by Natural before the Commission?

A. Yes, sir, I do.

Q. Now, all of the gas which Natural transports from the Guymon-Hugoton Field is the gas which is purchased from the Panoma Corporation, you know that to be true?

A. I'm not, I don't know that of my own knowledge.

Q. So far as you know——

A. So far as I k. w, that's right.

Q. You happen to know what that volume now is?

A. I think it's something on the order of about eighty million feet a day.

Q. I might say that the obligation is about seventy-eight million with about sixty-eight million being transferred. Your estimate of the obligation is approximately correct, at [fol. 303] any rate, isn't it?

A. Yes, sir.

Q. At any rate, it's the obligation which you had in mind?

A. Yes, sir.

Q. Now, do you know how much gas is being transported by Northern Natural from the Guymon-Hugoton Field?

A. No, I do not.

Q. At *any* rate, all of the gas which Northern Natural acquires, produced from the Guymon-Hugoton Field, is transported outside of the state. You know that they have no local——

A. I am sure.

Q. Sale——

A. I am sure that's correct.

Q. Now you know, do you not, that all of the gas which Panhandle produces from the field is transported outside of the state?

A. That's from the Guymon-Hugoton field?

Q. Yes, Guymon-Hugoton field?

A. By Panhandle Eastern?

Q. Yes. Of that which they produce?

A. No, I don't think——

Q. By the Cities Service?

A. No.

[fol. 304] Q. You don't know the facts about that?

A. No, I don't.

Q. You do know that the——

A. I do know that some of the gas the Cities Service market is not marketed in Kansas.

Q. Yes.

A. But now this other gas, I don't know.

Q. You don't know how it ties in with gas from other fields Cities Service has?

A. No.

Q. Now, the gas which Phillips produces from the Hugoton field and sells to Panhandle Eastern you know is all first transported to Texas and in Texas is sold to Panhandle?

A. Yes, sir.

Q. And then is transported out of Texas and through Oklahoma into other states?

A. Yes, sir.

Q. You know the same thing is true as to the gas produced in the Guymon-Hugoton field by Phillips and sold by Phillips to Michigan-Wisconsin. That's taken to Texas first and then transported through Oklahoma into other states?

A. Yes, sir, that's——

Q. Interstate markets?

[fol. 305] A. Yes, sir, that's true.

Q. And that's true, also, is it not, as to the production from certain other producers, for example, Skelly turns some gas to Phillips on the Michigan-Wisconsin delivery?

A. Yes, that could be true of that gas.

Q. And Stanolind gas?

A. Yes, that would be true of that gas.

Q. And the Kerr-McGee?

A. I think it would be true and also true of some Magnolia gas.

Q. As a matter of fact percentagewise, there's an extremely small percentage of the gas which is produced in the Guymon-Hugoton field which is used in the State of Oklahoma?

A. I believe that's right.

Q. Probably wouldn't be over one or two percent at the most?

A. Very small fraction.

Q. Are you familiar with the movement in and out of the state of gas produced in other fields in Oklahoma?

A. No, not as to relative amount, no. I do know something about the layout of some of the systems in Oklahoma in connection with some of the mines, but from the other Oklahoma fields in general, the greater part of it is marketed in Oklahoma.

[fol. 306] Q. Practically all, without reference to exact percentage, but the greatest portion of the gas from the other fields in Oklahoma is marketed and used for various purposes in the State of Oklahoma?

A. Yes, sir.

Q. And the prices in those fields are, in many instances, far less than 9.8262 cents?

A. I believe so.

* * * * * * *

H. W. Long, called as a witness, being first duly sworn, testified as follows:

Examination.

By Mr. Robinson:

Q. What's your name, please?

A. H. W. Long.

Q. Where do you live?

A. Guymon, Oklahoma.

Q. What's your connection with the Texas County Royalty Owners Association, Mineral Owners Association? [fols. 307-364] A. I am director of the Association and semi-official representative for them at these hearings.

Q. How many members of that Association do you have?

A. Something between five and six hundred, representing about sixty-five percent of the landowners in the county.

Q. And is this action prosecuted on behalf of all those owners?

A. Yes, sir.

Q. Are those owners out there satisfied to sell their gas at less than what it is worth?

A. No, sir.

Q. Those owners, are in controversy, certainly in that they have filed this application for an increased price?

A. They are very unhappy.

* * * * * * *

[fol. 365] Mr. A. M. Rippel, called as a witness, and having been duly sworn, testified as follows:

Examination.

By Mr. Williams:

Q. Your name is Mr. A. M. Rippel?
Q. You live at Bartlesville, Oklahoma?
A. I do.
Q. And connected with the Phillips Petroleum Company?
A. That's right.
Q. In what position?
A. Manager of the Natural Gas Department.
Q. How long have you been connected with Phillips Petroleum Company?
A. Since December 1st, 1925, almost twenty-seven years.

[fol. 366] Q. State briefly, Mr. Rippel, your educational background, the experience and other qualifications you have to testify in this proceeding in respect to the matter of producing, gathering and processing for sale of gas in the Guymon-Hugoton field.

A. My education, a college degree, Batchelor of Science in chemistry. That was in 1920. Shortly thereafter I joined the Empire Gas and Fuel training school course in Bartlesville. It-s now the Cities Service Company. Within that school for about a year and a half and then a job with the Empire Gas and Fuel in evaluation work. I resigned from there and went with Phillips on December 1st, 1925, and did evaluation work there, evaluation of oil and gas properties, until the latter part of 1937 when I was transferred to the Gas Division of the natural gas and gasoline department. One year later, in 1938, I was made assistant to the manager of the Gas Division. At that time it was Mr. Butler. Then, in 1943, I was made Manager of the Gas Division, and March 1st, 1951, the Natural Gas Department was created and I was made Manager, and I have been in that capacity up to now.

Q. Mr. Rippel does your company have properties to carry on operations in the Guymon-Hugoton field that would be affected by the proposed order in this proceeding?
A. Yes, they do.

Q. Are you familiar with the • properties and those operations?

A. I am.

[fol. 367] Q. How long have you been familiar with that field?

A. I have been familiar with the field since its discovery, sometime in 1928 or 1930. We acquired some acreage back in the early 30's, but we made our largest acquisition in the Guymon-Hugoton field, and the Texas Hugoton field, I believe it was in 1941 or 1942, somewhere about that time. And then we developed it afterwards, in '43 and '44.

Q. Have you been familiar with the development of the field and development of the market in the matter of negotiating for the sale of gas from that field?

A. Yes, sir. I negotiated both of the contracts in which they are selling residue gas from that field.

Q. Mr. Rippel, in order that we might understand each other, and that the Commission may understand this, when I refer to the Guymon-Hugoton field, you understand that I refer to the Texas County, Oklahoma portion of the larger area known as the Hugoton field.

A. That is my understanding.

Q. And when we refer to any portion of the larger field that's in Texas, we refer to it as the Texas Hugoton field.

A. That is correct.

Q. Mr. Rippel, in general, what is the nature of your company's operations in this area.

A. The production of gas, building wells and production [fol. 368] of gas; gathering of the gas at central points; extracting the liquid hydrocarbon and selling the rest intact into the market.

Q. Does your company purchase any gas in the area?

A. In the Guymon Hugoton field we purchase considerable gas——

Q. And what is the nature of your——

A. And we gather that gas and condition it for market and sell it.

Q. Is any of the gas that your company produces in the Guymon-Hugoton field sold at the wellhead?

A. No. There may be one exception to that, a well in

which we have a very small interest, in the townsite of Goodwell.

Q. Is that well operated by some other operator?

A. That's correct.

Q. Other than that, all of the gas produced by your company in the Guymon-Hugoton field is gathered, processed and sold in the form of residue?

A. That's correct.

Q. Elsewhere than at the wellhead?

A. That is correct.

Q. Mr. Rippel do you have a map that, in general, portrays and shows the extent and character of your company's properties in this area?

A. Yes, sir.

Mr. Sweet: If the Court please at this point——

* * * * * * *

[fol. 369] By Mr. Williams:

Q. Mr. Rippel, there is on the blackboard what purports to be a map that's been marked by the Reporter as Exhibit Number 30. I will ask you if that is the map to which you have just made reference?

A. It is. This map was prepared about a year and half ago, about the first of 1951 in connection with the Phillips Petroleum Company's case before the Federal Power Commission, and it shows the acreage which Phillips owned and the acreage which Phillips purchased gas; the gathering system, and the location of gasoline plants in the Guymon-Hugoton area and in the Texas-Hugoton area.

[fol. 370] Q. Just a moment, Mr. Rippel. Not to break your chain of thought, but would you indicate on that map where the division line is between the Guymon-Hugoton portion of the field and the Texas portion of the field?

A. That's the line with the, indicated here in white and slightly under the middle, and more definitely the line extends over to the right hand side of the map, and the north side of line is the Oklahoma and the south side of the line is Texas.

[fol. 371] Q. Let me ask you this question at this point: Does the presence of a state line at that point have any

significance so far as the physical characteristics of the producing formation or reservoir is concerned?

A. No, sir.

Q. It is purely a coincidence that the pool extends on two sides of the state line?

A. That is correct.

Q. Proceed.

A. At the time this map was prepared, about the first of 1951, it correctly portrayed the ownership; in other words, all of the blue acreage, both in the Guymon-Hugoton and Texas-Hugoton is dedicated to a contract which we have with Panhandle Eastern Pipeline Company, where we sell . . . where we gather and sell all the residue gas from that acreage.

Q. Is that acreage held under standard form oil and gas leases for your Company?

A. Yes. The yellow acreage on both the Guymon-Hugoton and Texas-Hugoton is acreage upon which largely now there are wells. The gas gathered from that acreage is dedicated for the life of production and committed to the Michigan-Wisconsin Pipeline Company. The red acreage in both Oklahoma and Texas is acreage which Phillips [fol. 372] owns and the residue gas therefrom is committed to the Michigan-Wisconsin Pipeline Company for the life of production. Now, there have been a few changes where we have farmed out some of this red acreage since the map was made. We didn't correct the map for this hearing. All of the gas is dedicated for the life of production.

Q. Would the changes to which you refer be substantial?

A. No, they're not substantial.

Q. Minor changes?

A. That's correct. We have, in Oklahoma, as of the first of the year, we own 173,000 acres and we purchase gas from 74,000 acres.

Q. In other words, the acreage shown on the map in blue and red, in the Guymon-Hugoton field, is approximately 173,000 acres?

A. That's correct.

Q. And the acreage shown in yellow on the Oklahoma side of the line is approximately 74,000 acres?

A. That's correct.

Q. How many wells has your Company drilled on its leased acreage in Oklahoma, the red and the blue?

A. 198 wells.

Q. How many wells are connected to your Company's [fol. 373] gathering system that are located on acreage of other operators from which you purchase the gas, in the Guymon-Hugoton field?

A. Sixty-two wells in May of 1952. These figures are as of May, 1952.

Q. I noticed, overlying the blue acreage on that map, there's some lines that are indicated in a light tan or brown. What do those lines indicate?

A. That's our gathering system, gathering gas from various wells from acreage dedicated to the performance of our contract with Panhandle Eastern Pipeline Company. The gas is gathered and brought to a central point through these main arteries to the Hansford plant, where it is processed and delivered to Panhandle Eastern Pipeline Company.

Q. Is the location of the Hansford plant to which you referred shown on that map?

A. Yes, sir.

Q. How is it indicated?

A. It is indicated by a yellow arrow and marked thereon is Hansford Plt.

Q. All the gas that's produced on the blue acreage is gathered through the gathering system indicated in brown and taken into your Hansford plant at the point indicated?

A. That's correct.

[fol. 374] Q. Now, in what way is the gathering system indicated on that map that gathers the gas taken into any other plant that you may have?

A. That is indicated in black and that gas is dedicated to the performance of the Michigan-Wisconsin Pipeline Company. That gas in black and this gathered over in this area comes over here and that goes to the Sherman plant which is adjacent to the Hansford plant, but is entirely separated as far as volumes of gas. The gas is processed but is gathered through lines as indicated in black and the residue delivered to Michigan-Wisconsin Pipeline Company.

Q. All right, now, Mr. Rippel, as of the last date you have

the figure, what is the volume of gas being produced by Phillips Petroleum Company from its own owned leases, or from the blue and red acreage, in other words, in the Guymon-Hugoton field?

A. Currently, for the month of May it was something like 43,000,000 cubic feet per day, but there was a strike going on during that time and the volume was down. I believe that our average production over the year will average 60,000,000 cubic feet a day.

Q. Measured by . . . measured at a 14.65 pound pressure base?

A. That's right.

[fol. 375] Q. Do you know what percentage that is of the total production from the Guymon-Hugoton Field?

A. Phillips' percentage of participation in the field is slightly over 14 per cent.

Q. Produced gas?

A. That's right.

Q. What volume of gas is produced from the wells in the Guymon-Hugoton field to which your Company is connected with which you purchased from others?

A. Currently, about 16,000,000.

Q. Then in all, the produced and purchased gas handled by Phillips through its gathering system in the Guymon-Hugoton field is approximately 18 per cent?

A. 18.2.

Q. Of the field?

A. Of the field.

Q. Total?

A. Total; correct.

Q. Now, referring to the gas that you purchased from other producers, the yellow acreage on the map, who are some of those producers?

A. Kerr-McGee Oil Industries; Stanolind Oil and Gas Company; Tascosa Gas Company; and the Texas Company.

[fol. 376] Those are the companies we are purchasing from.

Q. Is that gas purchased on a day-to-day contract or a long term contract, or on what basis?

A. All the gas that we purchase in this entire area, in the Guymon-Hugoton area, is for the life of production.

Q. Now, merely for information, your operations on the

Texas side of the dividing line are carried on in substantially the same way as those in Oklahoma?

A. That's correct.

Q. As part of the total operations in that area?

A. Just as the blue acreage on the Texas side here. Gas from this acreage is dedicated to Panhandle Eastern. We have a gathering system through here. The gas comes down through those smaller gathering lines and comes into the Hansford plant; similarly, the lines indicated in black gather gas for Michigan-Wisconsin delivery of residue through the Sherman plant.

Q. Now, Mr. Witness, although there's another witness present to testify in detail as to the processing of that gas, extraction of liquids in the plant, in general what occurs at that point?

A. At the Hansford plant all the gas which is gathered from the Guymon-Hugoton field is processed in the gasoline plant for the extraction of liquid hydrocarbons and the resi- [fol. 377] due is then delivered to Panhandle Eastern. At the Sherman plant, the gas which is gathered from the Guymon-Hugoton area is processed in the Sherman plant and after liquid hydrocarbon extraction the residue is delivered to Michigan-Wisconsin Pipeline Company.

Q. I'll ask you, Mr. Witness, if you have a photograph of the two plants to which you refer on which is indicated the delivery point of the residue gas to the two purchasers to whom you have made reference?

A. Yes, sir.

Q. I hand you an instrument which the reporter has marked as Exhibit 31 and ask you if that is the map to which you have made reference?

A. Yes, sir.

Q. What does that photo show?

A. It shows site of the Sherman and Hansford plants.

Q. Which——

A. At the west side of the Sherman plant, you can tell the west by the indication of the direction of north on the print, is the delivery point to Michigan-Wisconsin. On the east side of the Hansford plant is the delivery point to Panhandle Eastern. One might think that the Sherman and Hansford plants are all one plant. They are two sepa-

rate plants, although they are on one site more or less adjacent.

[fol. 378] Q. And the gas that enters those two plants is never commingled?

A. It's never commingled.

Q. I have handed another photo to the reporter which has been marked Exhibit 32 and ask if that's the photo of the same facilities, except taken from a different angle?

A. That is correct.

Q. I introduced that one, Mr. Witness, to have you indicate on that map to the Commission the location of the state line with relationship to these facilities.

A. The location of the state line is clearly indicated on this photo by a road. On the photograph it appears about an inch north of the directional north indicated.

Q. Running diagonally across the upper righthand portion of the photograph?

A. That is correct.

* * * * * * *

Q. Do you have with you, Mr. Ripple, copies of the contracts under which the residue gas is sold to Panhandle Eastern Pipeline Company and to Michigan-Wisconsin Pipeline Company?

[fol. 379] A. Yes, sir.

Q. I have handed to the reporter and have had him mark as Exhibits No. 33 and 34 two instruments, and I'll ask you to state what they are.

A. Exhibit 33 is termed Supplemental Contract Between Phillips Petroleum Company and Panhandle Eastern Pipeline Company, dated April 5, 1943, to which is attached as Exhibit A, the gas contract between Phillips Petroleum Company and Panhandle Eastern Pipeline Company.

Q. Did you participate in the negotiation of those contracts?

A. Yes, sir.

Q. Now, referring to Exhibit 34, state what that is?

A. This is an amendment, dated April 25, 1944, to the Supplemental Contract, Exhibit 33.

Q. And do those two Exhibits, No. 33 and 34, comprise

your contract with Panhandle Eastern Pipeline Company for sale to it of residue of the Hansford plant?

A. That is correct. This amendment also amended somewhat a processing contract we had with Panhandle Eastern; but, insofar as the sale of gas, it just amends the supplemental contract.

Q. I hand you what the reporter has marked as Exhibits 35, 36 and 37, and ask you to briefly state, if you will, what those Exhibits are.

A. Exhibit 35 is a gas contract between Michigan-Wis- [fol. 380] consin Pipeline Company and Phillips Petroleum Company, dated December 11, 1945. Exhibit 36 amends Exhibit 35, insofar as certain dates, price and acreage commitments are concerned. Exhibit 37 is a further amendatory agreement between Michigan-Wisconsin Pipeline Company and Phillips Petroleum Company, dated December 1, 1949, which makes further amendments as to acreage dedicated and price adjustments. All three of these contracts has to do with the sale of residue gas from the Guymon-Hugoton area dedicated to Michigan-Wisconsin shown on the map in red or yellow.

Q. In other words, Exhibits 35, 36 and 37 comprise the contracts for the sale of residue from the Sherman plant to Michigan-Wisconsin Pipeline Company?

A. That is correct.

Q. Does the map which you have on the board, which is marked Exhibit 30, show the lines through which Panhandle Eastern Pipeline Company and the Michigan-Wisconsin Pipeline Company take the gas from the plants and from the field?

A. Yes, sir. Panhandle Eastern's line is indicated in green, going in an easterly direction from our Hansford plant where it connects with a line coming from the Panhandle and goes on off the map to the northeast. The Michigan-Wisconsin transmission line is shown in green, starting [fol. 381] at our Sherman and goes in a northeasterly direction off the map.

Q. Does your Company, through stock ownership or otherwise, own an interest in Panhandle Eastern Pipeline Company or Michigan-Wisconsin Pipeline Company?

A. No, sir.

Q. Do you know what those Companies do with the gas that is delivered to and purchased by them?

A. I read it in their annual reports every year. They transport it and sell it into the market--some industrial sales and some locally in cities and towns served by them.

* * * * * * *

Q. Mr. Rippel, you have testified as to your Company's operations in the Guymon-Hugoton field. Is your Company's position unique with respect to that type of operation or other companies you know of that carry on similar operations in the Guymon-Hugoton field?

A. There are two other companies that gather and process their own gas and sell into interstate commerce. If they are buying any gas it-s not of any great volume. Two companies are Panoma and Plains Natural who produce and [fol. 382] gather their own gas and process and sell it into interstate commerce.

Q. Do you know, Mr. Rippel, do you have available, or can you obtain a figure that would show the percentage of gas produced in the Guymon-Hugoton field that is sold at the wellhead or on the lease where it is produced as distinguished from gas, such as in your case, which is gathered or gathered and processed and sold elsewhere than at the wellhead?

A. I don't have that figure. The only gas that I know that is sold at the wellhead is the sale of Cities Service Oil Company to Northern Natural Gas Company.

Q. The 4 per cent of field production that is purchased by Phillips from other companies is gas sold at the wellhead?

A. Yes, that is sold at the wellhead. Then, in Oklahoma, to my knowledge, we are the only people that buys, gathers and processes it.

Q. But, you don't have the other figure that I asked of gas in the field sold at the wellhead?

A. No, I don't have.

Q. Mr. Rippel, although there's another witness present to testify in detail as to the amount of return to the Company from the liquids extracted from the gas, do you, in your position as Manager of the Gas Department, know, ap-

proximately, how that income from liquids compares with [fol. 383] the cost of gathering and processing the gas?

A. Yes, the values of the liquids——

* * * * * * *

Q. What is that comparison, Mr. Rippel?

Mr. Culton: Just a minute. We object to the witness stating a conclusion as to the amount of receipts as compared to the amounts of expense. The Commission, I think, will want the testimony of someone in a position to detail the facts and we would be entitled to the exact facts to cross examine him on, rather than just an ultimate conclusion.

* * * * * * *

[fol. 384] Mr. Lange: If the Court please, we are going to object to receiving testimony of that nature for the additional reason the testimony of this witness shows that the extraction process is a Texas operation and he would be asking this commission to fix the margin of profit and loss on an operation outside the State of Oklahoma over which this Commission clearly has no jurisdiction; and for the further reason that we asserted in our original objection that [fol. 385] we believe that issue is beyond the province of this Commission.

Chairman Bond: The testimony should be confined to Oklahoma and the testimony should be confined to the facts. We have no jurisdiction in Texas.

Mr. Lange: That's right, and he testified to the extraction process, which is all in the State of Texas.

Mr. Williams: All that we ask of the Commission is to be permitted to show what the facts are, and then, when the others have all left, the Commission can then decide and we can debate.

Chairman Bond: You give us the facts, and we'll give you an opportunity to argue the case.

Mr. Williams: Now, this witness has testified that he knows how the income from liquid compares with the cost of gathering and processing and I'll ask him to state it.

Chairman Bond: And confine that fact to Oklahoma.

Mr. Williams: I am talking about Oklahoma, about operations in Oklahoma gas.

Mr. Adams: May I ask a question?

Chairman Bond: Yes.

Mr. Adams: Your processing, to which your present question is addressed, is wholly done in Texas?

Mr. Williams: That is correct.

[fol. 386] Mr. Adams: We, in behalf of Northern Natural Gas Company, object to the introduction of any evidence in this respect and ask that the Exhibits 33, 34, 35, 36 and 37 be stricken from the record. I believe the Commission said a moment ago when they were offered, I was informed, I didn't hear you, you asked if there were any objections.

* * * * * * *

Chairman Bond: The Commission will not strike the Exhibits at this time that have been received, but the Commission will limit the testimony to Oklahoma.

Mr. Culton: Might I ask a further question, Your Honor, in connection with my objection?

Chairman Bond: You may.

Examination.

By Mr. Culton:

Q. Mr. Rippel, the gas which is produced in Oklahoma goes into the plant in Texas in a common stream with gas produced in Texas, does it not?

A. Not in many instances. I think in one. I am not entirely familiar but there is a witness here that can answer that question in exactitude.

[fol. 387] Mr. Williams: I believe he testified that the operations in respect to the gas produced in Oklahoma now produced in Texas was a part of one overall operation.

Mr. Rippel: That is correct.

Mr. Williams: And the presence of the state line crossing through this field of production is but a mere coincidence.

Mr. Rippel: That is correct.

Further examination.

By Mr. Williams:

Q. The figures that you have testified to, though, generally, have dealt with only the gas produced in Oklahoma?

A. That is correct.

Q. And the figure that I am now asking you, or the fact that I will now ask you, refers to gas produced in the Guymon Hugoton field?

A. Produced and gathered.

Q. Now, you were asked the question as to fact . . . as to the fact as to how the income from liquids compares with the cost of gathering and processing the gas?

Mr. Culton: If the Court please, that's interstate because the operation has been shown to be outside the State of Oklahoma.

Chairman Bond: The Commission for the present is going to confine the operations to Oklahoma. We fix the wellhead [fol. 388] price in Oklahoma.

Mr. Williams: May I make this secure to the Commission at this particular point. Phillips Petroleum Company is not in this proceeding asking the Commission to fix any price for gas. As stated at the last hearing, we are not one of the Applicants in the proceeding. We are a producer and purchaser of gas in the field which will be vitally affected by any order that is made. And if there is any disapproval, in aid to the Commission in making whatever order the Commission sees fit to make, we are not suggesting to the Commission that it fix the price at any place other than at the wellhead in Oklahoma.

Chairman Bond: As long as you confine your testimony to the wellhead in Oklahoma, its immaterial to the Commission what you do with the gas or where it goes. It might go into Canada, it might go into any of the northern states, it might go into Texas. We want to know that this gas is produced in Oklahoma. We want to get jurisdiction of it at the wellhead, in Oklahoma.

Mr. Williams: I want to make this further point. The Phillips Petroleum Company does not sell its gas at the wellhead, and we will offer proof that less than 25 per cent

of the gas that's produced in the Guymon-Hugoton field is sold at the wellhead, with the result that when the Com- [fols. 389-391] mission makes a wellhead order it, of necessity, must prescribe how the price is to be arrived at in relation to the wellhead when it isn't sold at the wellhead. In one subsequent order, the Commission said that you meant to say that if it is not sold at the wellhead that it shall be the equivalent of the wellhead price. With this proof, it is an aid to the Commission to determine what would be the equivalent of a price at the wellhead in Oklahoma.

* * * * * * *

[fol. 392] Q. Is it a fluctuating figure, or is it constant?

A. It fluctuates throughout the season as to the price of gasoline and other products.

Q. You have a witness present who has the figures in that regard, as I understand it?

A. He has all the facts and figures.

Q. If that fact is true, Mr. Rippel, what then must Phillips Petroleum Company obtain for the residue gas that it sells to get what would be the equivalent of a price of 9.826 cents at the wellhead in Oklahoma?

* * * * * * *

[fol. 393] A. The same price for residue gas is being received per 1,000 cubic feet as the price which the Commission set at the wellhead.

Q. 9.8262?

A. 9.2262 cents per 1,000.

Q. I understand that you're not recommending to the Commission that it fix that price, but make your answer on the assumption that the Commission did fix the minimum price at the wellhead?

A. I so understood your question.

Q. Mr. Rippel, what would be the result in respect to the operations of your Company related to the production and gathering of its own gas, if this Commission made no effort to prescribe a wellhead price of 9.82 cents per m.c.f. at the wellhead and your Company was only able to obtain [fol. 394] the price to which you referred for the residue?

A. Insofar as Phillips' production is concerned, it would reduce any profit we are making now so far as some of our sales are concerned.

Q. Would you be making profit at all, or would it result in a loss?

* * * * * * *

(Witness continues.)

A. At the present time the price we are receiving for gas from Panhandle Eastern Pipeline Company would throw us into a loss.

Q. What would result in respect to gas you purchased from others in the Guymon-Hugoton field, gather and process and then resell residue, if you're not able to obtain for the residue the price equivalent to the prescribed wellhead price?

A. That would be a very definite loss. It would practically be a confiscation of our investment, insofar as gathering gas.

Q. Mr. Rippel, do you have a recommendation to make to this Commission as to what kind of order it should make if it concludes to increase the minimum wellhead price in the Guymon-Hugoton field?

[fol. 395] A. Yes, sir.

Q. Mr. Rippel, I've handed to the reporter an instrument to be marked as Exhibit 38. Is that the recommendation to which you have made reference?

A. Yes, sir.

Q. Will you please state to the Commission what that recommendation is?

A. Do you want me to read it into the record?

Q. Read it, if you wish.

A. It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. No gas shall be produced from any well located in the Guymon-Hugoton field of Oklahoma except at a price of not less than 9.8262 cents per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262

cents per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262 cents per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold [fol. 396] during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262 cents per thousand cubic feet.

2. No gas produced from the Guymon-Hugoton field shall be gathered by a gatherer who purchases the same in the field of production and resells the same during or at the conclusion of gathering unless the gatherer obtains therefor a price not less than 9.8262 cents per thousand cubic feet plus the reasonable cost of gathering; provided, that if the gas so gathered and sold is processed by the gatherer for the extraction of liquid hydrocarbons during or at the conclusion of gathering, the price for the residue so sold shall not be less than 9.8262 cents per thousand cubic feet.

3. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic foot.

4. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space [fol. 397] measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit.

5. This order shall become and be effective this (blank) day of (blank), 1952.

Q. Mr. Rippel, in order for making no mistake, and all of this may be repetition, but as I understand it, you're not recommending in this recommendation that the Commission increase the welihead price to 9.8262 cents per m.c.f., but

that if it does see fit to so increase it, then the form of the proposed order as you have read it would be your recommendation?

A. That is correct.

Q. That is how the Commission could do what it is asked to do and at the same time protect producers and gatherers, such as Phillips Petroleum Company and others similarly situated?

A. That is correct.

Q. As I understand your reading of this proposed order, Paragraph 1 would relate to gas that is produced, gathered and processed by the producers?

A. That is correct.

Q. Paragraph 2 would relate to a situation where a gatherer in Oklahoma purchased the gas at the wellhead, gathered it, processed it, and at the conclusion of gathering, sold it?

[fol. 398] A. That's correct.

Q. Now, in Paragraph 3, I note you make reference to a minimum of 950 British Thermal Units per cubic foot of gas. What is the significance of the 950?

A. Well, that is a measure of heating value of gas. As the Hugoton field has been developed, also the Guymon-Hugoton field, there has been gas found lesser than 950 British Thermal Units. There must be some standard. I have in mind one well that we tested, Phillips tested, several years ago in the eastern part of the Guymon-Hugoton field, I believe was 888 b.t.u.'s. Well, it just has such a higl. nitrogen content, which, in my opinion, has the same price or what's a fair heating value for gas. The contracts which Phillips have made in the last 5 or 6 years, the purchasers have been agreeable to a price of 950 b.t.u.'s.

Q. Having 950 b.t.u.'s is gas acceptable as pipeline gas?

A. It has been accepted by pipelines, and is being accepted. I believe Northern Natural, Plains Natural Gas Company accept it at 950 b.t.u.'s.

Q. Does that involve substantial volumes of gas.

A. Yes, I believe approximately 16,000,000 cubic feet a day.

Q. And the contracts negotiated by Phillips Petroleum

Company in the past few years were on a 950 b.t.u. basis?

A. That is correct.

[fol. 399] Q. I notice in this recommendation you say "saturated with water vapor at standard conditions." The phraseology "standard conditions" has an accepted meaning, does it?

A. Yes, sir.

Q. Will you state what that is?

A. Gas measured from 16 degrees Fahrenheit and at a pressure equal to that exerted by 30 inches of mercury at 32 degrees Fahrenheit.

. . . . . .

Examination.

By Mr. Culton:

Q. Mr. Rippel, did I understand you to say that on Exhibit 30 the blue area represents gas that was delivered by contract to Panhandle Eastern?

A. That is correct.

Q. The brown lines with circles in the center of each section represent portions of gathering systems of Phillips?

A. That is correct.

[fol. 400] Q. The primary lines have short lines leading into them on each side?

A. That's right.

Q. Either I didn't make my question clear or I misunderstood your answer as to the commingling proposition. It's true, is it not, that the state line is approximately at that point? This point here?

A. That is correct.

Q. And gas . . . for example, there's a line from the west into the Sherman plant, I believe that's Panhandle Eastern——

A. Hansford plant.

Q. Hansford plant . . . there's a line running from the west, that's about some, how far, 15 miles, roughly?

A. It's about that length.

Q. And all along that line gas is brought from Oklahoma into Texas?

A. That is correct.

Q. That is a primary trunk gathering line, is that right?

A. That's correct.

Q. Now, the same thing is true, is it not, only with a lesser number of wells, on the primary lines running from the east into that same State? You have several wells connected across the line?

[fol. 401] A. That is correct.

Q. So that with those two lines, gas is brought from the Guymon-Hugoton field down through the primary gathering lines in the Texas portion of the Hugoton field; in addition to that, you have three primary trunk lines which serve Oklahoma exclusively?

A. Yes. If I understood your question, you said that all the gas was commingled and I had definitely in mind that there was one where it is not, which is the Michigan-Wisconsin gathering system over here. I'm really not too familiar with all the details, yet I didn't understand you to say that you limited your question to the gas of the Panhandle Eastern.

Q. Well, it doesn't make any difference because neither one of us is trying to get away from the factual situation. Now, on these primary lines coming in from the west and the east to which production from wells up in Oklahoma is delivered, you also take a large volume of gas from wells produced in Texas and delivered . . . and deliver it into the same gathering lines that sold the gas produced in Oklahoma?

A. That is correct.

Q. And all of these trunk lines get together at Hansford station?

[fol. 402] A. Yes, sir.

Q. Then, in addition to that, you have a line which serves exclusively wells in Texas, leading into the same gasoline plant?

A. That is right.

Q. These trunk lines to which I have referred, come into the plant and when they get to the plant the gas from all those lines is commingled into a common stream or streams without relation as to whether the gas is coming from Oklahoma or from Texas?

A. I believe, eventually, it gets into a common header. I really don't know. It's commingled to some extent, there's no question about that.

Q. In the trunk lines coming from the west and from the east, the gas produced in Oklahoma and the gas produced in Texas goes into a common stream?

A. Correct.

Q. And, as a common stream, comes into the gasoline plant?

A. Right.

Q. And, somewhere in the gasoline plant, either at the entrance or later, that gas is commingled with gas that comes in from lines exclusively serving Texas and from lines exclusively serving Oklahoma?

[fol. 403] A. The only thing I can say is that I presume it does. There's a witness here who can answer you very meticulously.

Q. Well, you were vouching for the map.

A. I was vouching into the gathering point at the plant and with its connection at the header there—I really don't know.

Q. Well, now, there's at least one of those trunk lines, is there not, which handles gas that has a substantial amount of sulphur content?

A. In the Hansford plant?

Q. Yes. Or is that all sweet gas at the Hansford plant?

A. There is some sour gas in this area here——

Q. That is to the east?

A. To the east that goes to the Hansford plant, but it is not treated.

Q. It is not treated? There's not a sufficient amount of it to keep the commingled gas from being——

A. It blends out.

Q. It blends with the sweet gas so that the entire commingled mass is of a quality which is sufficient to satisfy your contract with Panhandle?

A. That is correct. It's more a—it's more or less a negligible amount of sour gas.

Q. In that gasoline plant, do you extract a certain amount [fol. 404] of liquefiable hydrocarbons from the gas so

as to bring it within the provisions of your contract with Panhandle?

A. Yes, sir.

Q. And you have a leeway on the b.t.u.'s, do you not?

A. Yes, sir.

Q. What is your leeway?

A. Down to 960 b.t.u.'s per cubic foot of dry gas.

Q. That's the minimum. What's the maximum?

A. I'll have to look at the contract. I don't recall if there is. There may be.

Q. Well, we can get that later. What is the b.t.u. content of most of the gas that goes into the Hansford plant—raw gas?

A. I don't have that figure. It was running from somewhere around 1015-to-1020.

Q. Have you determined the amount of liquids you take out, the Gasoline Department? I mean by "you", the Phillips Petroleum Company. I'm sorry. You do not always take the same percentage of liquids out of the same b.t.u. gas, do you?

A. I do not know.

Q. What is done with those liquids that you take out at the Hansford plant?

A. I believe they're taken to Borger. I don't handle that.

Q. You handle the products line at Borger, do you not? [fol. 405] A. Yes, sir.

Q. And those liquids there are removed.

A. They are.

Q. And you don't sell them in the form you take them out?

A. I can't answer that. I don't know.

Q. Well, don't you know, in your position, that those liquids are used in blending and in various manufacturing processes in the Borger area?

A. I really don't know, Mr. Culton. There's a man here who can explain all that.

* * * * * * *

Q. The residue gas which remains after these liquefiable hydrocarbons are extracted at the Hansford plant, the residue gas is all delivered at the outlet of the plant to Pan-

[fol. 406] handle Eastern Pipe Line Company under the contracts which you have heretofore identified?

A. Yes.

Q. And do you know that Panhandle Eastern puts that residue gas into its interstate pipeline leading to Missouri, Illinois and Michigan and other states to the East?

A. That is correct.

Q. And do you know that the Panhandle Eastern does not have any sale outlet for that pipeline after that gas has arrived over to the State of Oklahoma?

A. No, I really do not know that.

Q. Well, you don't know then, do you?

A. No, I know they make some sales to pump stations. Whether there is any in Oklahoma, I don't know.

Q. Well, it doesn't amount to anything then in volume?

A. I would say the volume doesn't amount to any large volume, I just don't know.

Q. Now, getting to the Michigan-Wisconsin area, the red area, the big area, represents leases that, at the time the map was prepared, all belonged to Phillips?

A. Yes, sir.

Q. And the yellow acreage represents leases owned by other producers but who had dedicated those leases to [fol. 407] Phillips for the life of the production?

A. Yes, sir.

Q. I believe you stated that since this map had been made there has been a few farm-outs?

A. Yes, sir.

Q. To whom were those farm-outs made?

A. Kerr-McGee Oil Industries. Are you speaking of Guymon, Oklahoma?

Q. The Guymon field is what we're talking about.

A. Kerr-McGee Oil Industries.

Q. Is that all in the Guymon field?

A. Yes, I think 10 wells are all they had.

Q. When were those farm-outs made?

A. I think last spring sometime.

Q. Since the Commission entered its order—at any rate, it's been more than last spring?

A. Yes, that's right.

Q. The farm-out carried the right of Phillips to purchase that gas and pay for that gas during the life of production?

A. Yes.

Q. And did those contracts set forth a price that Phillips would pay for that gas?

A. I'll have to get the contract to——

[fols. 408-410] Q. Well, you don't know?

A. No, I don't know. I know it set forth a price, but what it was is what I don't know. I'm sure it set forth a price.

Q. Now, the gathering system for the yellow acreage and the pink acreage is indicated by the black lines on Exhibit 30, I believe?

A. That is correct.

Q. And all of the pink acreage and all the yellow acreage is dedicated by Phillips to this contract with Michigan-Wisconsin Pipe Line Company?

A. Yes, sir.

Q. It's true, is it not, that with respect to that acreage that there are instances where gas in Oklahoma wells and gas from Texas wells go into the same trunk line?

A. Through the same main gathering line, yes.

Q. That's what I mean by trunk lines; for example, the one I'm pointing to here.

A. Yes.

Q. The one to the left goes to the Sherman plant. The one to the west, however, runs quite a good many miles within the same section before it gets into the plant.

A. Yes, there is 8 or 10 miles there.

* * * * * * *

[fol. 411] Q. Well, I just wanted to find out what you know about it. The Sherman plant, which you have stated is located in Texas, is only about a quarter or a half-mile south of the boundary, something on that order. After the liquefiable hydrocarbons are extracted from the raw gas in that Stratford plant and the Sherman plant, the residue is delivered to the Michigan-Wisconsin Pipeline Company under the contract which you heretofore referred to?

A. Yes, sir.

Q. And from that point, Michigan-Wisconsin transports it a mile and three-quarters to the state line and then

through Oklahoma, then through other states to the state of Michigan and the state of Wisconsin, with some sales probably in Missouri and Kansas. That is correct, isn't it?

A. That is correct.

[fol. 412] Q. There is——

A. Did you say a mile and a quarter?

Q. A mile and three-quarters, approximately. I think its 1.74. There is no sale that you know of made by Michigan-Wisconsin in the State of Texas or Oklahoma?

A. Not that I know of.

Q. And you negotiated, I believe you stated, both the contract of Panhandle Eastern and the contract of Michigan-Wisconsin?

A. I assisted in it.

Q. And at the time the contract of Panhandle Eastern was made, you were very familiar with the Panhandle Eastern contract—where their lines ran and so on?

A. Yes, I knew where their lines ran.

Q. And it was your definite understanding, was it not, at that time, that the gas that you were to sell, the residue gas, to Panhandle Eastern was to be transported by Panhandle through its pipeline system to its markets in Missouri, Illinois, Michigan and Ohio and other eastern points?

A. That was certain, yes.

Q. And that contract, I believe, was made in 1943?

A. Correct.

Q. And at that time, Panhandle obligated itself to obtain [fol. 413] certificates of convenience and necessity from the Federal Power Commission that would enable it to have the capacity to transport your gas, along with the other gas, to those eastern points?

A. That is correct.

Q. And, in fact, that is recited in the contract, isn't it?

A. Yes, sir.

Q. And the contract was not to become effective unless and until Panhandle should be able to get that certificate of convenience and necessity from the Federal Power Commission for that transportation and sale? That's correct, isn't it?

A. That's correct.

Q. Now, at the time you entered into that contract with

Panhandle, there was no other place you could sell that gas, was there?

A. I wouldn't say that. It was at that time, though, the best market we had available.

Q. You didn't have any other market available, did you?

A. I believe we did.

Q. Where?

A. We could make one.

Q. Under the laws of this State?

A. Well, I don't know what year Cabot went into——

[fol. 414] Q. Well, if you had any other market, it would have been nothing but a carbon black market?

A. At that particular time, I believe that is correct.

Q. You bought this acreage principally in 1941 and 1942, I believe you stated?

A. Our large entrance into that area and from then up-to-date.

Q. How many wells did you have in the blue colored area when this contract was made in 1942?

A. I don't recall. Very few.

Q. If you had been able to get the right to operate a carbon black plant there, the value of gas at that time, of carbon black manufacture, was far less than the price you obtained from Panhandle under that contract?

A. At that particular time, it was. Two years later, it wasn't.

Q. I'm talking about the time you made the contract, you considered that an exceptionally good contract with the company you negotiated with?

A. It was at the time.

Q. It was a contract that the parties entered into in good faith, with the full intention of carrying it out?

A. No question about it.

[fol. 415] Q. Now, you also participated in the negotiations with Michigan-Wisconsin Pipe Line Company upon the sale of gas—by the way, you selected both the point of delivery for both the Michigan-Wisconsin sale and the Panhandle sale, didn't you?

A. It was agreed to between the parties.

Q. But you were the one who made the selection?

A. It was more central in the field.

Q. And Panhandle built a line about 15 miles long to enable it to take that gas, didn't it?

A. Yes.

Q. The Michigan-Wisconsin Pipe Line Company at the time it entered into the contract in 1945, I believe, that Company had no pipeline at all, did it?

A. That Company did not.

Q. That contract was entered into with the intent of both Phillips Petroleum Company and Michigan-Wisconsin Pipe Line Company that Michigan-Wisconsin Pipeline Company would obtain a certificate of public convenience and necessity from the Federal Power Commission to authorize it to construct the pipeline extending from the point to which you were to deliver gas to it up into the states of Michigan and Wisconsin, with possibly some sale in Missouri?

[fol. 416] A. Yes, sir.

Q. And the contract was contingent on Michigan-Wisconsin obtaining that certificate and building that line?

A. That is correct.

Q. So, at the time that contract was made, it was the intent of both parties, within your knowledge, that this gas would be used for the interstate pipeline and transported into the states to which I have referred?

A. That is correct.

Q. That was the intent of both parties at the time of signing the contract?

A. Yes.

Q. The Michigan-Wisconsin gas approximately the same, the natural gas, the residue of which is delivered to Michigan-Wisconsin, has roughly the same b.t.u. content at the natural gas from which you deliver the residue to Panhandle Eastern?

A. Approximately, yes.

Q. I know that it varies over the field, of course, but roughly it would be about——

A. You mean the residue gas?

Q. I'm talking about the natural gas, before extraction.

A. I believe that the gas from Michigan-Wisconsin has a slightly lesser b.t.u. content and when you consider the

[fols. 417-424] Texas Hugoton and the Oklahoma Hugoton, its about the same.

* * * * * * *

[fol. 425] Q. Phillips Petroleum Company is one of the largest, if not the largest, extractors of liquifiable hydrocarbon in the country, are they not?

A. That is correct.

Q. And it has been in the business of extracting liquids ever since they have been in the business?

A. Well, I can't answer that with exactitude. I believe our first gasoline plant was built in 1918, '20, or '21, or something like that.

Q. But as Phillips grew, particularly during the time you have been with the company, it has been a very great producer of natural gasoline and other liquifiable hydrocarbons?

A. Yes, sir.

Q. Those hydrocarbons have varied very greatly in price during that period?

A. Yes, sir.

Q. And that has varied from time to time from about a cent a gallon to eight and nine cents a gallon, has it not?

A. In a general way that may be correct. That's a matter that can be determined.

[fol. 426] Q. Now, the prices of those liquids change very much during the years, there being difference in prices in the summer time and the winter time?

A. That's right.

Q. And you *guage* the amount of liquid that you will take out of the raw gas, by whether or not some of those liquids would have more value to you in the residue stream than as extracted liquids.

A. When you say 'you', I presume you are referring to——

Q. I am talking about Phillips Petroleum Company all the time when I say 'you'.

A. I would assume that they go through that calculation. Part of it would be reasonable to assume.

Q. But you don't know what their practice is?

A. I really don't.

Q. And you don't know, or do you know the difference in price?

A. Yes, I know that fluctuates periodically.

Q. How many galions per m.c.f. does Phillips extract from the raw gas in these two plants we are talking about?

* * * * * * *

[fol. 427] Q. Now, Mr. Rippel, if I understand the map correctly, the blue area represents acreage upon which your company holds leases?

A. That is correct.

Q. And on the blue area Phillips does all the producing of natural gas. You drill your own wells and do your own producing?

A. That is correct.

Q. And under your contract with Panhandle Eastern, you produce, gather and transport all of that gas to your extraction station plant in Hansford County, Texas, is that correct?

A. No, that is not correct. We produce and gather the gas from central points in the field, process it and deliver the residue——

Q. Where is the central point?

[fols. 428-432] A. Hansford County, Texas.

Q. You do produce it, gather it, and transport it to Hansford County, Texas?

A. There's *is* no transportation involved, in my way of thinking.

Q. You get it over there, your company gets it over there?

A. We gather it to central points.

Q. And then you run it through your extraction plant?

A. Yes.

Q. Extract and retain the liquifiable hydrocarbons?

A. Yes.

Q. And under your contract you sell only the residue gas to Panhandle Eastern at the outlet point of your extraction plant in Hansford County, Texas?

A. I believe that's all. At one time we sold a little propane. I don't know whether that's sold right now, or not.

Q. Substantially, all you sell them is the residue gas?

A. That is correct.

Q. And that sale is made at the point for immediate transportation in interstate commerce?

A. Yes.

* * * * * * *

[fols. 433-434] Examination.

By Mr. Culton:

Q. Mr. Rippel, in all of the operations by Phillips Petroleum Company in the production of this gas, without bringing in the theoritical or technical or actual distinction between production, transportation and gathering, but in the moving of this gas, shall we say, from the point where it's produced down to the gasoline plant, Phillips is very careful to waste no gas, isn't it?

A. Yes, sir.

Q. And Phillips does not commit waste, in your opinion, physical waste, in the production of that gas or in the moving of that gas down to the gasoline plant. That's correct, isn't it?

A. I don't know of any gas being wasted.

Q. You fully comply with the Commission's regulations for the prevention of waste, physical waste, do you not, or at least try to?

A. Yes, we try to comply with all the Commission's rules and regulations.

Q. And there would be no difference in your efforts to do that if the price was four, four and half, nine or fifteen cents, is that correct?

A. That's correct.

Mr. Culton: That's all.

* * * * * * *

[fol. 435] Examination.

By Mr. Williams:

Q. I believe you testified this morning, Mr. Rippel, taking into consideration the quality and character of the gas in the Guymon-Hugoton field, in your opinion, the 9.82 price

for the residue would be the equivalent of that price at the wellhead?

A. That's correct.

Q. Now reference has been made here to the use of a single gathering system, and a single plant to gather and process the gas from both Oklahoma and Texas acreage that is sold to the Michigan-Wisconsin Pipeline Company. Was that a part of the deal and the consideration for the development of that market for the gas that goes to the Michigan-Wisconsin Pipeline Company?

A. It definitely was. It was an agreement that the gas was dedicated to the performance of the contract and kept separate and not com-ingle with the other gas interests in that area, produced and sold in that area. It would require us to have a separate gathering system from the acreage dedicated to the performance of the Michigan-Wisconsin contract and a separate gasoline plant.

Q. Then the same thing was true at the time the Panhandle Eastern deal was developed?

[fols. 436-438] A. The same thing is true of the Panhandle Eastern contract.

Q. Using a single gathering sources for gas both in Oklahoma and Texas, going into the single market?

A. That is correct.

Q. Earlier, in answer to Mr. Culton's question, as to the price payable to the Texas Company, Stanolind Oil and Gas Company, Tascosa and Kerr and McGee, you said, I believe, you didn't know offhand those contract prices, but you would procure that information?

A. Yes.

Q. You do know, as a matter of fact, that all of those companies are being paid presently at the rate of seven cents per thousand cubic feet, under the Commission's order?

A. That is correct.

Q. And you are willing, though, to supply the information with respect to what the contract price?

A. The information as to what the contract was, and if there has been a written agreement as to seven cents, I know we are paying them all seven cents.

* * * * * * *

[fol. 439] Mr. George P. Bund, called as a witness, and having been duly sworn, testified as follows:

Examination.

By Mr. Williams:

Q. State your name.
A. George P. Bund.
Q. Where do you live, Mr. Bund?
A. Bartlesville, Oklahoma.
Q. You are employed by Phillips Petroleum Company?
A. I am.
Q. What is your position with that company?
A. I am Manager of the Natural Gasoline Department.
Q. State briefly your educational background and your experience and qualifications to testify in this hearing with respect to the matter of handling and processing of gas, particularly as related to the Guymon-Hugoton field?
A. I have a B. S. degree in mechanical engineering from the University of Kansas. I have been participating in the oil and gas business since 1916. I have been employed by Phillips since 1921. In that period I have been in the natural gas and gasoline end of the business, and I was manager of the natural and gasoline department beginning about 1930 until March, 1951 when the department was devided, and since that time I have been manager of the Natural Gasoline Department.
[fol. 440] Q. You are Manager of the Gas and Gasoline Department during the period that the Guymon-Hugoton field was developed?
A. Yes, sir.
Q. And the sales of gas, which were testified to here, were negotiated?
A. Yes, sir.
Q. You heard Mr. Rippel's testimony with reference to properties and operations of the Phillips Petroleum Company in that field and area?
A. Yes, sir.
Q. Are you, yourself, personally familiar with those properties and operations?

A. Well, I was at the time they were procurred. I haven't paid much attention to it the last year or so.

Q. The last year or so?

A. Yes, sir.

Q. During the last year or so your functions have included what, in relation to this field?

A. The operation of the natural gasoline extraction plants and the disposal of the liquid products from these plants.

Q. That included supervision of the plants that have been referred to as the Sherman plant and the Hansford plant?

A. That's right.

[fol. 441] Q. In your duties, as I understand it, the gas comes under your supervision at the time it reaches those two plant?

A. Yes, its in our possession, so to speak, going through the plant.

Q. Will you briefly outline for the Commission, Mr. Bund, just what occurs as that gas reaches the plant, or plants, if there is a variance in the two plants, and what occurs to it in the plant, what you do to it?

A. Well, simply stated, the gas in the Hansford plant enters the plant passing through an operation known as scrubbers for removing any contained materials in it, and from there it passes through absorbers where the gas is contacted with an absorbing oil for the purpose of extracting the liquefiable factors. The gas passes from these absorbers as residue gas, a part of which is used in the operation of the plant, the balance of which, along with a few other factions, is passed through dehydrators where the water vapor content of the gas is reduced and from that it is delivered to the purchaser.

Q. In the case of the Hansford plant, that's the Panhandle Eastern Pipeline Company?

A. That's right.

Q. All right, go ahead.

A. The absorbing oil is processed after contacting the raw [fol. 442] gas the absorbed hydrocarbon vapors driven therefrom and subsequently, mostly reduced to a liquid form by cooling. The liquid product is known as raw nat-

ural gasoline and is disposed of from the plant in that form. Such vapors as such may not be condensed by cooling, as the oil is processed, usually reenters the residue gas stream from absorption and become a part of the gas delivered to the purchaser.

In the case of the Sherman plant, the gas enters the plant and again passes through scrubbers. Part of the gas which contains more hydrasulphite is exposed to the treating facilities which removes the greater part of that sulphite and that treated gas, plus sweet gas, which enters the plant, is then passed through the absorbers of the plant in the same manner as in the Hansford plant, and the residue gas from those absorbers, in this case, passes more of it directly to the purchaser, which, for the Sherman plant, is the Michigan-Wisconsin Pipeline Company. Part of the residue gas, however, again is used for fuel for operating the plant facilities.

Q. Is the gas coming into the Hansford plant and the gas coming into the Sherman plant commingled at any time?

A. The gas with respect to each of the two plants is at no time mingled. The two supplies of gas are entirely separate.

Q. Now you say that the liquids extracted from the gas is [fol. 443] what is commonly known as natural gasoline?

A. Raw natural gasoline.

Q. Raw, natural gasoline?

A. Yes.

Q. What is done with the liquids so obtained so far as the plants are concerned?

A. The raw natural gasoline is pumped from the plant through a pipeline to a point in the vicinity of Borger, Texas where it is subsequently processed in various forms for the markets to which it ultimately goes.

Q. How far distant is Borger, Texas from the plants which you made reference?

A. In the order of seventy miles.

Q. Is the raw natural gasoline extracted from the gas at the two plants, in that form, a saleable or useable product?

A. I know of no use to which such raw natural gasoline

is equipped, in a consumer sense. It is a raw material which has to be further refined to go into the normal commercial markets.

Q. And that further refinement, occurs, I believe you say, at Borger, Texas?

A. In this case yes.

Q. What principal elements are obtained from that raw stream?

A. There are a variety of hydrocarbons contained in it, but generally speaking for market purposes, it is sub- [fol. 444] divided into a grade of natural gasoline labeled 2670 natural gasoline into surplus butanes over and above 2670 and propane. It may also contain some residuals as hydrasulphide, some ethane and methane, but the three commodities I mentioned are the particular market components.

Q. Do you recall the volume of liquid hydrocarbon that is recovered per thousand cubic feet of gas on each of the two plants?

A. Well, I don't recall exactly. They vary from time to time, but the month of March, for instance, this year, at the Hansford plant the average total of the raw natural gasoline would amount to about 78,000 gallons a day. In the case of the Sherman plant about 189,000 plus gallons a day.

Q. Do you have that figure in terms of number of gallons per thousand cubic feet of gas?

A. Yes, sir.

Q. Processed?

A. The extracted product, in the case of the Hansford plant, represented .809 gallons per thousand cubic feet. In the case of the Sherman plant .527 gallons per thousand cubic feet.

Q. Now comprised in the stream of raw, natural gasoline, handled from the Hansford plant, you have the figure as to [fol. 445] butane and propane?

A. Yes. In the case of the Hansford plant the 2670 extracted comparable in raw gasoline is .35, approximately, per thousand cubic feet. In the case of butane it was .26 gallons per thousand cubic feet. In the case of propane it was .25 gallons per thousand cubic feet, approximately.

the composite making up about 8/10 gallons of raw gasoline extracted per gallon, per thousand cubic feet.

Q. Now the information as to the Sherman plant.

A. In the case of the Sherman plant for this particular month the 2670 component of the raw gasoline extracted, was 34/100's gallons per thousand cubic feet. The butane over and above that was 14/100, approximately, gallons per thousand cubic feet, and the propane was .5 gallons per thousand cubic feet, making a composite of about five and a quarter, about five-two-five gallons per thousand cubic feet in the composite figures.

Q. Mr. Bund, do you have a means, or a basis, of evaluating the value of the raw, natural gasoline as it is extracted from the plant?

A. Yes, the accounts are kept on a separate basis, and the plant credited with the raw natural gasoline in each instance which it delivers, in this case, to the point near Borger, [fol. 446] Texas. The composition of the raw gasoline is determined continuously by each month, composite delivery, and the 2670 content thereof is credited in the plant at the average low quotation as published in the Oilgram, which is a market quoting medium in the industry, less one-eighth of a cent a gallon. The deduction of one-eighth cent in our accounting is to compensate for the physical losses for handling the raw material during the course of carrying the various components on the market, at least partial compensation to the agency which must do the treating and loading and selling of the product. The butane above the 2670 is credited to the plant at the low average price at which the company buys butane in the area. If at the time it is buying low butane the plants are still credited with one and half cents per gallon for any such excess useage. We have, from time to time, in our buying of butane at one and half cents a gallon, or less, so it represents an approximation of what the overall average might be. In the case of propane, the plant is credited with the weighted average price of the sales received by the processing storage account near Borger where the materials are refined for the market, less one-quarter of a cent per gallon. The deduction again is to offset the physical losses in handling propane, at lease some part of the cost

of processing it and treating it and preparing it for market. [fol. 447] The deduction in the case of propane is somewhat larger than the case of 2670 gasoline because propane is a much more loss on material, and, than 2670, and losses, generally speaking, are higher in the handling of it, in the processing and in the storing and loading it. These prices are used in the cases of these two plants, in the Sherman and Hansford plants, and samiliar values are arrived at accordinng to the location where all other plants of the company are located, or operated.

Q. In your opinion, Mr. Bund, is that basis of pricing, or evaluating, representative of the fair value of the products delivered from the two plants?

A. Well, its an approximation of what the values would be if the products were, if there was equipment at these plants to completely process the raw material, to store it and condition it for market and to ship it. In general, we believe, somewhat favorable to the plant, in that the cost of handling the material is, on the average, somewhat higher than the amounts allowed in this pricing basis.

Q. It-s a price basis of long standing, before any order of this Commission, before they fixed the price of gas?

A. Yes. This basis has been used for quite some years.

Q. Although there is another witness here, Mr. Bund, who has the exact figures, as to the income from the liquids, [fol. 448] do you generally know how that income from liquids compares with the cost of gathering and processing this gas?

A. I don't recall the exact figures, but the cost of getting the gas into the plant and of extracting the liquids and materials from the gas and conditioning and delivering it to the purchaser is about in balance with the income credited to the plant from the liquid products produced in the raw stream.

Q. I understand that the income, or rate of income, may vary from time to time with the variance in the market value of the products. Is that right?

A. Yes. The prices of the liquid products vary from time to time. The costs of operation, of course, vary from time to time, depending on maintenance and other variable expenses, and also they vary with the volume of gas that

may be processed from time to time. That is not a constant.

Q. Would you say that the quality of the gas varies somewhat too, depending upon the combination of wells, which at one time or another may be supplying the gas to the plants?

A. Yes, sir.

Q. And when you testified a few moments ago that roughly speaking, they were in balance, you mean by that from the average?

[fol. 449] A. Yes, on the average. There will be times when the difference will be more than other-. They may be in favor of the liquid products and in other instances it may be in favor of the costs.

Q. Your company has a number of other gasoline plant operations, does it not? Elsewhere than in this particular location?

A. Yes, we have quite a few plants, a number of which compare generally, with the Hansford and Sherman plants, in their operations and the kind of gas they handle.

Q. And all of those plants are under your supervision and direction as Manager of the Gasoline Department of Phillips Petroleum Company?

A. Yes.

Q. Are you familiar with the costs of the operations and the value of liquids in respect to these various operations?

A. I don't recall each plant material cost, by month or any particular period of time, but I do know by frequent attention to them that in plants of this character the situation is about the same in respect to the value of the liquid products and the costs of the getting the gas into the plant and the condition of the gas and delivering it to the purchaser.

Q. From your knowledge and experience, in respect to the building and operation of the gasoline plants and the value of the liquids, do you have a general knowledge as [fol. 450] to what those type- of operations can be carried on for, and what the term might be, generally, under conditions similar to which you operate?

A. Well, as far as any generally similar situation the cost would be in the same order and magnitude, yes.

Q. And taking into consideration the character of the operations that are carried on to other gathers and processors, such as Phillips, would it be fairly comparable to what your experience has been?

A. Well, I haven't had the opportunity to examine the figures of other companies in detail, but I feel quite sure from the nature of the processing involved that the economy would be very comparable.

Q. Generally, speaking, what effects Phillips Petroleum Company in this particular area, in this particular field, would reasonably be true as to other——

Mr. Culton: Your Honor, he is leading the witness.

Chairman Bond: He may answer.

A. Any other concern engaging in similar operations in this area, the same kind of gas, would be bound to come out about the same way that Phillips Petroleum Company. If the operator had a somewhat different setup where he could finish his product at his plant, and had the equip- [fol. 451] ment for doing that so that it was ready to go by commodity into the commercial market, than were shipped from that plant, and had the storage and handling facilities for it, his investment might be somewhat higher, and his credit for liquid products might be somewhat higher than our plant gathering the raw stream. But the net result would come out in the same order of that magnitude as to the value of the liquid as compared to the cost of getting the gas into the plant and conditioning it for market, delivering it to the purchaser and the conditioning of the product.

* * * * * * *

Examination.

By Mr. Culton:

Q. Mr. Bund, you mentioned the contents of the gas. Did you have the type of butane and propane included?

A. They were included in the components that I gave, but not as such. That is, not identified and separated as such.

Q. What price do you usually sell it at?

A. Well, it depends on where they go. In our case we haven't been selling any——

Q. Been using it?

A. —as such. I mean, we send some of it out in the mixed butane as butane. We have been using some of it, yes.

[fol. 452] Q. But the prices you mentioned were not the prices you get for that mixture?

A. No.

Q. What price do you get for it when you sell it?

A. Well, that depends on what we can get for it. It varies quite a great deal. We have sold butane some months back, I recall, for two cents a gallon, in that range. We have sold it for higher than that at times, depending on what the market would bring.

Q. And what price do you use for 2670?

A. We use the average of the price quoted in the Oilgram, for each month.

Q. Yes, and what was 2670 gasoline selling for then?

A. Well, as I recall, it was five cents.

Q. And what has been the highest in the last two years and the lowest for the last two years?

A. Well, I can't tell you offhand. I have records of that at home, but I don't remember.

Q. The prices at which these different constituents of the natural gasoline, which you expect to sell, of course vary year by year and month by month, and practically day by day?

A. They will vary a good deal, yes.

Q. Sometimes they are as much as three or four times as [fol. 453] much as at other times?

A. Well, you can start from any base and say that, yes. 2670 I recall being as low as one and half cents a gallon, at least, and maybe lower.

Q. And you've seen it higher than eight cents?

A. Yes, I've seen it higher than eight cents.

Q. And the same variation in price occurs in butane and popane and other constituents taken out of that type of gas?

A. They all vary with the supply and demand situation,

from time to time. We averaged, as an example, the price of 2670 or its equivalent before the time it existed as such in the industry, over a period of some twenty-five years, and the price came out about five cents, even though it reached prices higher than eight cents and prices as low as one and half cents.

Q. You stated you have quite a few gasoline plants, the Phillips Petroleum Company. Just how many?

A. Well, I will have to count them for you. I don't remember the number right off.

Q. Can you approximate them?

A. I would say ther- were about twenty-seven plants operated by the company, partly wholly owned and partly dependent on others, and about seven in which we have [fol. 454] interest that are operated by other-.

Q. Have any of those been constructed in the last three or four years?

A. Yes, we constructed one about a year ago.

Q. Where is it located?

A. Its located on the Gulf coast, in the Chocolate Bayou field, south of Houston, working on similar gas.

Q. You were in the same general department, that is, the gas and gasoline department, at the time the Michigan-Wisconsin contract was negotiated, were you not?

A. Yes, sir.

Q. Did you make any study at that time as to the economics of the gasoline plants for the purpose of extracting the liquids from the gas sold to Michigan-Wisconsin?

A. We made a lot of analyses, a lot of economic analyses, and I'm sure we did. I don't recall any particular attention to that angle alone, and I don't recall the results.

Q. Well, you do know that your computation didn't indicate you would be losing any money?

A. It didn't indicate in any of those instances that we would be making a great deal.

Q. It didn't indicate that you would be losing any?

A. As to the plants proper none of them indicated they would be very good on account of the cost of gathering [fol. 455] the gas and processing it in the plant.

Q. At that time you were anticipating that the wells in

the Hugoton field would average larger than they have actually averaged?

A. No. In the case of the Michigan-Wisconsin contract, we approached that with the data we had, which indicated that we wouldn't expect very much over four or five hundred thousand feet allowable per well, something of that order.

Q. Well, you anticipated that you would be able to supply all of their requirements from the reserve indicated, didn't you?

A. Yes. That was where the question of the amount of acreage came in.

Q. And you later set up additional acreage?

A. Yes. I think we added acreage a time or two to the total that was originally set.

Q. And that has been substantial?

A. Well, it depends on what you mean by substantial. There has been cases of several thousands acres added, yes.

Q. It-s been twenty or thirty thousand, hasn't it?

A. Well, it may have in the composite. I don't remember about any one instance.

[fol. 456] Q. You got quite a good deal of acreage down in the Stratford area, haven't you?

A. Well, the acreage is the same acreage that was indicated in the first place, but with the addition of more——

Q. In the Stratford area?

A. Stratford, I'm sorry.

Q. That's a subsequent dedication, isn't it?

A. That came in as an amendment to the contract.

Q. And you had previous amendments where you added acreage, haven't you?

A. Well, we had several. I don't recall whether previous or since.

Q. Did you make any calculations for the company at the time the 1943 field was laid in the Panhandle?

A. I don't know whether I did——

Q. Whether or not it would pay to take that gasoline out?

A. I don't believe I did at that time. I was tied up in connection with some of our government work at that time and I didn't have anything directly to do with that contract.

Q. Well, you do know that you expected you would be able to produce much more gas than that acreage committed to Panhandle than was estimated?

A. Well, at that time, as I recall it, yes, we did expect [fol. 457] somewhat more because there hadn't been very many wells drilled in the whole Hugoton area in Texas or Oklahoma.

Q. Well, all of your gathering lines were of sufficient size that you could, by change in the pressure differential, pressure for the gathering system, transport far greater volume of gas than you are now transporting?

A. Well, I think——

Q. Gather, I say.

A. I think that's true of any pipeline, to want to take more pressure differ-tial, and you can transport more gas.

Q. Yes, but you had in mind, didn't you, at the time of the Panhandle deal of transporting, or, shall I say, moving more gas through the gathering system?

A. I think that we anticipated that the wells would be somewhat more prolific than they all proved to be later. However, we didn't install the entire system immediately after that contract was made. We added to it from time to time since, right up to the present time, so that if there's any presumption to be made as to what we had originally, at least practically all set by what we found out later.

Q. But you processed much more gas than most gasoline plants?

A. Well, its our policy, generally, to presume that we will [fol. 458] have, under the conditions we expect to operate, a certain volume of gas, and to allow for some flexibility in almost any plant, somewhat more, under certain conditions.

Q. The liquids that you extract in both plants you stated are not the same volition?

A. They vary from time to time somewhere in the range of probably 55 pounds to 60 at times.

Q. And you take out practically all the butane and propane?

A. No, we take out a substantial portion of them. We are limited in these contract- by the value, the B. T. U. value

of gas that is ultimately sold, so that we do not strive for the maximum economical depth which we might extract.

Q. I know, but after allowing a minimum and taking out 35 pound gasoline, you don't leave much butane and pintane in that, do you?

A. No, there wouldn't be very much pentane. There would be somewhat more butane than pentane left, and there would be quite a bit of propane.

Q. This raw gasoline, which you extract, is transported from Borger, that's about how many miles?

A. Seventy or eighty, I guessed it.

Q. And that is practically all used by you, your company, at Borger in making different products, isn't it? You don't [fol. 459] sell much 2670 gasoline yourselves, do you?

A. No, sir.

Q. You don't sell much butane or propane, do you?

A. Yes, we sell quite a lot. In fact, I think we sell more than anybody else.

Q. Wintertime or summertime?

A. All the time.

Q. You have a surplus in the summertime, do you not?

A. Normally that's the case. We didn't last summer, but the market is slow in summer and extremes in the winter.

Q. And you have in mind to store it, butane and propane, don't you?

A. We not only have it in mind, but we are doing it. We provided storage for years, to accumulate some.

Q. That's so you will be able to take advantage of the better markets in the wintertime?

A. Partly that, partly because of the fact that you have to take care of it, and if the market doesn't take it all the time, it isn't a matter of price, its a matter of delaying, and you have to do something with it.

Q. So you do get a substantially higher price in the wintertime on butane and propane than summertime?

A. That- the general pattern of the pricing of those com- [fol. 460] modities, yes.

Q. Now your 26 pound gasoline, you use that for making what products?

A. Well, we add the most of it to refinery products made from crude oil and market it as motor fuel.

Q. And all of these constituents of the 55 pound, or whatever it is, are just thrown into the pot with similar constitutents and used for whatever purposes desired at the time?

A. Well, if you mean by that that raw gasoline from Hansford and Sherman plants is commingled with similar products from a lot of other plants and then the whole processed together, that's right.

Q. Just commingled?

A. Yes.

Q. You gave the content of .809 at the Hansford plant and .527 at the Sherman plant. Is that on a 14.65 base?

A. Yes, that's the month of March, 1952.

Q. Is that typical——

A. I don't know whether it is or not, to tell the truth about it. I didn't check it for a great number of months. That's a late winter month and early spring. It probably - a little higher than some other parts of the year and the average month a little less than that.

[fol. 461] Q. Is the Hansford plant a more viscous plant than the Sherman plant?

A. Well, I would say it is. Probably a little less loaded at the moment than the Sherman plant is.

Q. Can you explain why it is you get fifty percent more liquids out of the gas at the Hansford plant than you do at the Sherman plant?

A. Well, part of it is due to the fact that the compositions of the raw gas varies somewhat. At least for this month they indicate that much variation.

Q. There's a higher content as a whole, that month, in the gas going into the Hansford plant than that of the gas going into the Sherman plant?

A. Yes, on the basis of that composition. However, the 2670 in that particular case is about the same.

Q. The figures are .809 and .527?

A. Yes, but the 2670 content indicates about the same.

Q. Which gas is it that goes to the Hansford plant?

A. That gas which is connected to it from the well in

which we produce for Panhandle Eastern Pipeline Company.

Q. Most of that *has* is produced in Oklahoma, isn't it?

A. Well, I don't know what the proportions are. The acreage is somewhat greater in Oklahoma than in Texas, [fols. 462-465] and I presume that is the case.

Q. But the difference, the fact that 60 percent from 55 pound gasoline is taken from the gas flowing through the Hansford plant than is taken from the gas flowing through the Sherman plant is accounted for by the fact that there are more liquids in the gas flowing through the Hansford plant than the gas flowing through the Sherman plant?

A. Well, I wouldn't say necessarily. Of course, that's only one month's result there, and what the variation is, whatever the combination of wells from month to month, I think we can say this generally. From my observation, that the composition of the gas on the average going through the Sherman plant is a little less than at the Hansford plant.

Q. Why did you select March for those computations?

A. Its just an average mont-. I was trying to pick one that was typical and yet have one rather recently.

Q. As far as you know it was typical. You didn't pick it for any particular reason?

A. No, I didn't even look——

Q. As far as you know it is a typical month?

A. It could be, or it could be quite different from the average.

* * * * * * *

[fol. 466] Examination.

By Mr. Williams:

Q. Mr. Culton inquired of you as to the variation of liquid values, and I believe you said from year to year and from month to month. Is there a variation in the cost of operations likewise from period to perios?

A. Yes, I mentioned that there was. The cost varies in full and on a per unit basis, both, according to the conditions that exist at the time. We sometimes have usual operating expenses in a given month or given year, and do

not have in other years. There again you have a variation in the amount of gas that passes through the plant in one month as compared to another. Recently, for instance, we had the entire Sherman plant shut down because of a break in the Michigan-Wisconsin line for some weeks, yet we had the labor costs and quite a few other costs continuing just the same, so that the unit cost would obviously be affected.

Q. I believe you said that in your observation and your judgment that on the average, the return from liquid and the costs would about balance off?

A. Yes, as I recall the references to our results of these plants, over the same period of time would about break even, the cost of moving the gasoline and conditioning it for market.

Q. In your opinion would gas of like character in the same area be the same experience of other operators in [Vol. 467] similar operation?

A. The economics of other operators around there would be the same order of magnitude. They couldn't escape it.

Q. He also inquired of you as to the value of the component parts of this raw, natural gasoline at Borger after fracination?

A. Yes, sir.

Q. Corresponding with that increased value of those products after fracination there would be substantial increase in costs in obtaining such increased value, is that not true?

* * * * * * *

A. Yes, you have to have additional investment to do the additional processing and additional means for treating it or converting it and marketing it, shipping it and marketing it so that there are added costs of investment of operation and labor at the Hansford plant. The values of the components that we credit to these plants out of the raw material that is moved from them is comparable to the commodities that the average gasoline plant over the country markets, and in that sense it puts those plants on

a similar basis with plants that may be equipped to market [fols. 468-469] particular commodities.

Mr. Williams: I believe that's all.

* * * * * * *

[fol. 470] Mr. T. E. Smiley, called as a witness, and having been first duly sworn, testified as follows:

Examination.

By Mr. Williams:

Q. State your name.
A. T. E. Smiley.
Q. You live at Bartlesville, Oklahoma?
A. That's correct.
Q. Employed with Phillips Petroleum Company?
A. Yes, sir.
Q. What capacity?
A. Chief accountant of the Gas Accounting Section.
Q. How long have you been connected with Phillips Petroleum Company?
A. I first went with the Independent Oil and Gas Company in August, 1928, and it was acquired by merger by Phillips Petroleum Company in October, 1930. Its been approximately twenty-four years service.
Q. In your position with the company, Mr. Smiley, are you familiar with the books and records of the company that reflects the income and costs in respect to the gathering and processing of gas sales of the liquids in the Guymon-Hugoton field in Oklahoma and the Hugoton area Texas?
A. Yes, sir.
Q. Is that true with respect to the gas and the returns [fol. 471] plus relating to the Sherman and Hansford plant of your company in that area?
A. It is.
Q. I will ask you, Mr. Smiley, if you, at my request, have made up a statement from the books and records of the

company reflecting for any given period the returns from the liquids so extracted at the plants as compared with the cost of gathering and processing of the gas that is so processed?

A. I have.

Q. Do you have that with you?

A. Yes, sir.

Q. I have had the Reporter to mark Exhibit Number 39, and I will ask you to state if that is the statement you have so prepared at my request?

A. It is.

Q. Will you briefly state to the Commission what that statement shows?

A. Yes, sir. It shows separately for the Sherman system and the Hansford system, that is, the system that is connected to the Sherman plant, and delivering gas to the Michigan-Wisconsin Pipeline, and the system connected to the Hansford plant and delivering gas to Panhandle Eastern Pipeline Company. It shows the income from liquids versus gathering and processing costs based on the year 1951, and the Commission's order of 9.82 cents per [fol. 472] M. C. F. of gas produced and purchased at the wellhead.

Q. Why did you use the year 1951, Mr. Smiley?

A. To have a period of at least a year, to have an average for some period of time and including a period after the Sherman plant was in full operation.

Q. Now if you will, Mr. Smiley, I will ask if you take the Exhibit and explain the different business items and the conclusions there reflected?

A. It shows first the income from liquids. The liquid values were priced as testified to by Mr. Bund, based on the actual production of the plant. The value of the liquids priced that away were divided by the volume of gas received in each of the two systems to determine a value of the liquids per M. C. F. It shows for 26-70 gasoline on the basis of the price Oilgram quotation of 2.09 for the Sherman system 2.13 for the Hansford system, less the deduction of one eight- cents per gallon, which amounts to only fixe-hundre-ths of a cent per M. C. F. produced. The butane value if twenty-one hundredths of a cent for Sher-

man and forty-nine hundredths of a cent for Hansford per M. C. F. for gas produced and purchased. Propane amounts to eight hundredths of a cent for Sherman and thirty-eight hundredths of a cent per M. C. F. produced and purchased for Hansford. The costs are broken down into general classifications of gathering, processing, and there is an item shown that is not directly from the books. Extrac-
[fol. 473] tion, Fuel and Loss, which were determined by taking the difference between the total volume of gas produced and purchased and received into the system, and the total volume of gas sold out of the system, and the pricing of that difference at the proposed minimum price. Then there is the small item, Residue Delivery cost, representing largely the cost of maintaining the meter for delivery of the gas, giving a total cost at Sherman of 1.84 cents per M. C. F., and 2.44 cents per M. C. F. at Hansford for gathering and processing the gas. That leaves a net income of liquids, before income tax, of forty-nine hundredths of a cent for Sherman, and fifty-one hundredths of a cent at Hansford; then less federal income tax at the current rate of fifty-two percent; leaves a net income that we would receive if the gas was purchased and sold at the same price, the net income would be twenty-four hundredths of a cent at both plants. Then it also shows the investment we have in the facilities, or rather the net investment, after reserves for depreciation through December 31, 1951 of approximately $15,500,000 at Sherman and $4,200,000 at Hansford. The return on that investment, necessary to gather and process the gas would only be one and nine tenths cents at Sherman and 2.23 percent at Hansford. It also shows the volume of gas produced and purchased at the wellhead, M. C. F. 14.65 pressure base for each plant.

[fol. 474] Q. I believe, Mr. Smiley, that you, at my request, made a hurried calculation to check as to what the results have been for the first five months of this year?

A. Yes, sir.

Q. I understand you do not have that in exhibit form, but you do have a figure that you yourself has worked out.

A. I do.

Q. Would you state what that figure is?

A. The net income from liquids of gas purchased and

sold at the same price, computed in exactly the same manner as I described it for this statement as in Exhibit 39. For the Sherman plant it would be .14 of a cent for the first five months of 1952, and the Hansford plant would be a loss of .28 of a cent after reducing the actual loss of .59 of a cent by an assumed savings in income tax by having that loss deductible from other profits and other places, which gives you a return on investment 1.21 of [illegible] cent at Sherman and a loss of 1.97 of a cent at Hansfo[illegible]d. Incidentally, I might add that the liquid income is substantially the same as Sherman, but is up appreciably at Ha[illegible]sford to 3.22 of a cent, but the cost will up a greater a[illegible]ount at Hansford.

Mr. Williams: I believe that's all. I would like at this time to introduce, in aid of the witnesses' testimony, the [fols. 475-526] Exhibit which he has prepared, Number 39.

* * * * * * *

[fol. 527] George Bund, recalled as a witness, having been duly sworn, testified as follows:

Examination.

By Mr. Williams:

Q. Mr. Bund, you testified that you are familiar with the facilities of the Phillips Petroleum Company, both on the Oklahoma side and the Texas side of the state line in the Gymon-Hugoton field?

A. Yes.

Q. Is there anything with respect to the operations of the Phillips Petroleum Company on the Texas side of the state line that would cause you, in your opinion, to think that the cost of operations or the income would be materially different than that on the Oklahoma side?

A. No, there is no unusual circumstance that I know of. The gas is produced on both sides of the line from the same formation, the geologists tell us. As far as I can discern, there is no difference. There is some variation in the

amount of gas from one well to another, there is some variation of the quality of gas from one well to another, but on the general average they are both the same.

Q. Are the variations between the quality and character of gas in wells in Oklahoma?

A. Yes.

[fols. 528-529] Q. In the first 1,000 cubic foot unit of gas, you don't know of any reason why the cost in Texas would be materially different from the cost in Oklahoma?

A. No.

Mr. Williams: That's all.

Examination.

By Mr. Culton:

Q. Mr. Bund, what is the comparison as to the capacity of the two plants?

A. The Hansford plant, as I remember, has a designed capacity of about 160,000,000 per day and the Sherman plant about 350,000,000 a day.

* * * * * * *

[fol. 530] Q. By the way, I believe you stated, I'm not certain, but did you make any study of the Michigan-Wisconsin project under consideration?

A. We made a complete economic analysis of the project. It was anticipated, prior to making a deal, which included the cost of drilling the wells and of providing the lines with which to gather the gas and the gasoline and feeding facilities, and that analysis was, of course, built up from separate studies of different phases of it. We made a general analysis of it, yes.

Q. You reached a conclusion on the basis of the computations made at that time that it would be economic to Panhandle to put in an extraction plant and extraction facilities?

[fol. 531] A. Well, we decided the whole project was a feasible project.

* * * * * * *

[fol. 532] T. McDonald Biddison, recalled as a witness, having been duly sworn, testified as follows:

Examination.

By Mr. Williams:

Q. State your name, please.

A. T. McDonald Biddison.

Q. Are you the same Mr. Biddison who testified earlier in this same proceeding?

A. Yes.

Q. In what business or occupation are you engaged?

A. Consulting engineer in the oil and gas industry.

* * * * * * *

Q. Adding to your prior stated qualifications, what experience have you had in the matter of studies of gasoline plant operation, the matter of gathering of gas that comes in thereto and in particular to the Guymon-Hugoton field?

A. Well, generally speaking, I was one of the pioneers in the method of processing gasoline from natural gas. I haven't in recent years designed or operated any such [fol. 533] plants. I have, however, made studies of the installation costs, operating costs and revenues from plants of various operators in the Panhandle and Hugoton fields, including results from a plant of Panhandle Eastern Pipeline Company, and more recently a study on the gathering system of the Hugoton Production Company. Since the war, studies on some of the gasoline plants of Phillips Petroleum Company and some estimates on their behalf on plants in the area. I have also made an analysis of some of the results of operation on the gathering and processing plants of the Panoma Corporation in a case before this Commission.

Q. The plants of Phillips to which you refer, are they the Hansford and Sherman plants that have been testified about in this proceeding?

A. Yes.

Q. The study that you made in connection with the Hugoton Production Corporation, did that have to do with the

gathering and processing of gas in the Guymon-Hugoton field?

A. It had to do primarily with their gathering costs. Their gasoline plant was not yet in operation at the time of my study.

Q. The study you made in connection with the Panoma gathering system, were certain general principles used in connection with the cost of gathering and processing gas [fol. 534] and generally calculating the returns from liquids in respect to such fields such as the Guymon-Hugoton field and particularly in respect to the type of gas?

A. Yes, from studies of calculations made and estimates, one can readily generalize the costs and the reason for their variations.

Q. And that is also true in respect to the returns from liquids?

A. That is correct, yes.

Q. Could you give the Commission the benefit of your knowledge and conclusions in that regard, particularly as it applies to gas of the kind and character that you find in the Guymon-Hugoton field?

A. As to the gathering costs, they will vary in the initial installation, tending to be reduced by the average well size being large and the cost will increase as well pressure decreases. Furthermore, the gathering system investment and operating costs will decline per unit as the volume in the system is increased. That's the general rule. In processing plants, the investment per unit of capacity declines as the capacity increases. The investment per unit capacity will be increased if stripping be carried high into the butane and propane factions. Now, these variations [fol. 535] in degree of stripping are caused by restrictions on the heating value of gas delivered at the point of sale and may be affected by the nitrogen content of the gas as produced in the raw state from the well. Those are generalizations of tendencies in costs.

Q. Taking into consideration gas as produced in the Guymon-Hugoton field, can you give the Commission a generalization as to the cost of gathering and processing, taking into account depreciation, return investment, as compared with the returns from the liquid recovery?

A. I'd like to leave out the return on the investment in making such a comparison.

Q. All right, let's leave out the return on the investment.

A. Taking the out-of-pocket cost, plus depreciation, the gathering cost in the Hugoton area may be expected to vary roughly between the limits of 1-and-1½ cents per 1000 feet. The processing cost, depending upon the degree of stripping, requires 1000 cubic feet of gas at a cent and three-quarters.

Q. Now, if you take the sum of the maximum amounts of the cost of gathering and processing in the Hugoton area what would it be?

[fol. 536] A. It would be two cents per 1000 cubic feet. In the study I made of the data of the Panoma Corporation, as shown by the exhibit presented by me in my testimony in that case, if you deduct from the total cost of service shown in that statement the items figured for return and income tax, you get a resultant cost on their operations of 33½ per cent per 1000 cubic feet of 2670 gasoline. Currently, the normal expectancy over a long period is about five cents per gallon for 2670 gasoline and on 350 gallons that would give you 13¼ cents per 1000 feet of 2670 gasoline produced. Now, in addition to the 2670 gasoline, there is a normal expectancy of production of some additional liquids, some propanes in various proportions, generally referred to as LPG, may be restricted by the heating value of the raw gas and the specifications on the sales contracts as to the minimum heating value of the gas sold. Now, under varying conditions of raw gas and those sales contracts generally requiring that gas be something like 970 b. t. u.'s or more, the additional revenue from the LPG may amount to 15 per cent of that received from the 2670 gasoline to 40 per cent of that received from the 2670 gasoline. Now, that relationship may be varied from time-to-time because there may be a price season variation in the price received for the LPG material which might throw it out of balance with those [fol. 537] ratios I have recited. Well, now, if you get 1¾ cents per 1000 feet for your 2670 gasoline and 15 per cent additional LPG, you have a total revenue per 1000

feet of 2.45 cents. If your gathering-processing cost is two cents, including depreciation, you then have a remainder of .45, say ½ cent, available for return and income tax on that operation and the return of an income tax division of ½ cent somewhere between ⅓ and ½ would have to be taxed at the present tax rate, leaving a mighty small margin for earning rate on the investment, a very small margin.

Q. You say that you have made a study in respect to the Panoma gathering and processing operation?

A. Yes, sir.

Q. Did you find those operations to be within the range of the figures that you have here recited?

A. Yes, sir.

Q. You heard Mr. Smiley's testimony in respect to Phillips' operation of its Sherman and Hansford plants?

A. Yes, sir.

Q. Did you find their experience to be within the range of the figures you have here given?

A. Yes, sir.

Mr. Williams: I believe that's all.

[fol. 538] Examination.

By Mr. Culton:

Q. I believe you stated that you made a study for Phillips in connection with the construction of the Sherman plant?

A. That's right.

Q. What price did you estimate or use for your figures for 2670 gasoline?

A. I think it was something around 6½ or 7 cents at that time, Mr. Culton, I'm not positive.

Q. What did you use for butane and propane?

A. I think we used 3 cents on butane and about ¾ of a cent on propane.

Q. All those prices used are less than the present prices?

A. The prices on 2670 certainly are. I think, however, the price on propane is a little higher now than the price we used at that time.

Q. And do you know whether your estimate of cost was approximately what was actually incurred?

A. Well, I am sure that the estimate we made at the time was materially lower than what was incurred, because the price of steel at that time was about $64 or $64 a ton at the mill; the freight rate was, I think, about $20 a ton, maybe a little bit less. When they built the plant, steel was very very scarce and the price had gone up. I don't know what prices they actually paid for some of it, but as [fol. 539] compared to the price existing at the time of the estimate, the steel price is hiked now and it is about $125.

Q. In other words, at the time of completion of the project are the prices we are interested in not the present price?

A. I do not know the price they paid for steel at the time they built the plant. I know that during that period the prices had materially advanced above the prices used in the estimate.

Q. Then it would be to your best judgment, would it not, that Phillips' actual performance operations have resulted on the whole in lower income from liquids and higher cost of construction of operations than was estimated?

A. Absolutely.

Q. This is an occasion where a guess turns out wrong, just like all estimations, all guesses that turn out wrong are frequently classified as bad investments?

A. Well, I think we made a good business guess, but conditions change and we couldn't read the crystal.

Q. But for the fact that the value of the gasoline had substantially gone down from the time you made your estimate and the fact that the cost of construction increased after you made your estimate and before the project was constructed, Phillips would have had a better net return on [fol. 540] their plant than they have shown?

A. I feel sure of that, yes, sir.

Q. Did you also make a study for Phillips in connection with the construction of the Hansford plant?

A. No, sir, I did not.

Q. The only thing you had to do with that was after the construction you made some studies in connection with the——

A. I took some of the operating results.

Q. Just some of the operating results?

A. That's right.

Q. You do not know then what prices Phillips expected to realize from its liquids from the time construction of that plant as compared to the prices they now receive?

A. No, sir.

Q. Nor do you know what their experience was as to that construction?

A. No, sir.

Q. You referred to the unit cost. Of course, there are many things determining unit cost, are there not?

A. Yes, sir.

Q. One of them is the distance the gas has to travel; the greater the distance the more the cost. Another is, and I [fol. 541] believe you stated the pressure of the wells and also the size of the wells have something to do with that——

A. Yes, sir.

Q. Do you know whether or not it was later ascertained that the wells which are connected to the Sherman system and to the Hansford system, in both Texas and Oklahoma, had lower deliverability than was estimated at the time you made your estimate?

A. I don't know about the Hansford system, but I think that is true on the Sherman system.

Q. The greater portion of the wells serving the Sherman system are the wells are—are the wells located in Texas?

A. Yes, sir.

Q. And speaking as a whole the wells located in Texas part of the Hugoton field are not as prolific as the wells located in Oklahoma?

A. In the Sherman system?

Q. All, most systems I am talking about now. Taken as a whole, the wells in Hansford and Sherman counties are not as good, on the average, as the wells in Texas County, Oklahoma?

A. I believe that's right.

Q. The pressure has also gone down greater in proportion to the production, has it not, in Texas?

[fol. 542] A. I can't answer that question. I haven't got the information.

Mr. Culton: I believe that's all.

Examination.

By Mr. Williams:

Q. All these imponderables about which you've been asked were taken into consideration by you, were they not, in arriving at the generalized range of cost and income as testified to a while ago?

A. Yes, sir.

Q. Those items, both of cost and income, will vary from time-to-time?

A. Yes, sir.

Mr. Williams: That's all.

Further examination.

By Mr. Culton:

Q. I assume at the time you made your study, these imponderables existed and the result of your study was affected by them?

A. Yes.

Q. Its the same thing when a fellow drilis a well. He knows he may get a little gas or he may get a whole lot.

A. He has to base his operations on what he believes to be the probabilities.

Q. And if the probabilities don't pan out, why, the success or failure is as it would have been had it panned [fol. 543] out?

A. Unless there is some way to rectify the situation.

* * * * * * *

[fol. 544] Allen B. Hiatt, called as a witness, being first duly sworn, testified as follows:

Examination.

By Mr. Williams:

Q. State your name, please.

A. Allen Hiatt.

Q. Are you employed by Phillips Petroleum Company?

A. Yes, sir.

Q. In what capacity?

A. Coordinator of the Natural Gas Department.

Q. How long have you been employed by Phillips?

A. Since August 5, 1930.

Q. You are familiar with the operations carried on in the Guymon-Hugoton field in Texas County, Oklahoma?

A. Yes, sir.

Q. Have you, at my request, Mr. Hiatt, made an analysis of the volume of gas, in terms of percentage as a whole, produced in the Guymon-Hugoton field that is sold at the wellhead?

A. I have.

Q. As compared with the gas sold elsewhere than at the wellhead?

A. Yes, sir.

Q. What is the result of that analysis?

[fol. 545] A. My analysis shows that out of the total of some 1000 wells in the Guymon-Hugoton field, there is gas sold at the well from 141 of these wells and those 141 wells have 12.14 per cent of the production allowable in the field.

Q. In other words, 12.14 per cent of the gas produced in the Guymon-Hugoton field is sold at the wellhead?

A. Yes, sir.

Q. The remaining percentage of gas produced is sold or disposed of at points elsewhere than at the wellhead?

A. Yes.

Mr. Williams: That's all.

Examination.

By Mr. Culton:

Q. How much of that gas from those wells is consumed in the State of Oklahoma?

A. Well, I haven't made an analysis of the consumption of it.

Q. You don't know what market it went to?

A. I know what market the gas goes to by wells, but I don't have the volume tabulated.

Q. Could you give us the wells?

A. The Southwestern Public Service Company has one

well which they sell to Cabot Carbon Company. That's the Southwestern Public Service Company Bacon No. 1. Skelly Oil Company has two wells which they sell to Cities [fol. 546] Service Gas Company. That's the Elmo Jones A-1 and the Elmo Jones B-1. The American Gas Production Company sells gas from 72 wells to Northern Natural Gas Company.

Q. Those are wellhead sales you are talking about?

A. Yes, sir. Kerr-McGee Oil Industries, Inc., sells from 10 wells to Phillips Petroleum Company; Stanolind Oil & Gas Corporation sells from 30 wells to Phillips; and Tascosa Gas Company sells from 21 wells to Phillips. Butcher and Carey, J. M. Kessler, and Panoma Corporation sell from one well each to Southern Public Service Company.

Q. What about the Texas Company?

A. The Texas Company sells from one well to Northern Natural Gas Company and from one well to Phillips Petroleum Company.

Mr. Culton: That's all.

Witness excused.

---

[547] Mr. Williams: We would like to introduce in evidence Exhibit 41, which is the General Rules and Regulations, Order No. 19334, Governing the Drilling of Oil and Gas Wells and the Production Therefrom in the State of Oklahoma. As Exhibit 42, Order 24745 in Cause CD 3048; as Exhibit 43, Order 19702 in Cause CD 1054; as Exhibit 44, Order 19514 in Cause CD 1054; and as Exhibit 45, Order 17867 in Cause CD 983.

Chairman Bond: Received.

* * * * * * *

STIPULATION OF COUNSEL

Mr. Robinson: We offer as Exhibit 47 a stipulation entered into by the parties.

Chairman Bond: Received.

Mr. Hayes: Now, let the record show that the Applicants [fol. 548] and Natural Gas Pipeline Company of America

stipulated to the following facts which may be incorporated in the record:

1. Natural Gas Pipeline Company of America is a Delaware corporation, and is a natural gas company within the meaning of the Natural Gas Act of 1938 and amendments thereto. Under certificates of public convenience and necessity issued by the Federal Power Commission, it owns and operates a natural gas pipeline system extending from a point near Gray, Oklahoma, to markets in Iowa, Nebraska, Illinois, Indiana and Wisconsin. Its principal market is in the Chicago metropolitan area. It supplies large quantities of gas for use in such markets for residential, commercial and industrial purposes. The quantities so transported and sold aggregate approximately 184 billion cubic feet annually and average more than 500 million cubic feet daily, measured at a pressure base of 14.65 pounds per square inch. The greater portion of the supplies for such pipeline are obtained in the State of Texas and delivered into such system at Gray, Oklahoma, through a pipeline owned by Natural extending from Moore and Hutchinson Counties, Texas, to Gray, Oklahoma. A portion of such Texas gas is residue gas from natural gas produced by Natural Gas Pipeline Company through its own wells and a portion purchased in Texas from other producers. Additional gas for such system is purchased [fol. 549] by Natural from the Panoma Corporation. A contract was entered into between Natural and Harrington & Marsh on December 1, 1946. A copy of such contract is attached hereto as Exhibit "A". The rights of Harrington & Marsh under such contract have been assigned to and are now owned by the Panoma Corporation. The parties to such contract do not now agree as to the legal effect of such contract on the sale and purchase of such gas.

2. For the gas acquired by Natural from Panoma Corporation Natural is currently paying to Panoma seven cents (7¢) per m. c. f. computed at 16.4 pounds pressure base and applied to the volume of gas which enter Natural's pipeline system after passing through the gasoline plant of Panoma. Prior to the time such gas enters Natural's said pipeline after passing through Panoma's gasoline plant, Panoma extracts and retains liquefiable hydrocar-

bons from the raw gas, but the Corporation Commission by Order No. 19515 has directed Natural to pay at the wellhead rate for gas delivered at Natural's compressor station. Natural has appealed from such Order to the Supreme Court of Oklahoma.

3. None of the gas so purchased by Natural from Panoma is used in Oklahoma except the quantities that are used by Natural in operating its compressor station. The rest of [fol. 550] such gas is transported by Natural to its markets in other states and sold there.

We offer this stipulation as a part of this record.

Chairman Bond: Very well.

Mr. Hayes: The record should further show that the facts so stipulated have been presented to the Attorney for the Commission and he has approved of the stipulation. We also would like to offer as Exhibit 48 a copy of the contract referred to in the stipulation as Exhibit "A" between Natural Gas Pipeline Company and Harrington & Marsh.

Chairman Bond: Do you offer that as an exhibit?

Mr. Hayes: Yes, sir. Exhibit 48.

Chairman Bond: Received. Any further exhibits, gentlemen?

Mr. Robinson: Applicants have entered into a stipulation with Northern Natural Gas Company which has been identified by the Reporter as Exhibit 49, which we offer in evidence.

Chairman Bond: Received.

Mr. Robinson: Applicants have entered into a stipulation with Panhandle Eastern Pipe Line Company as to certain facts relating peculiarly to that Company. The stipulation has been identified by the Reporter as Exhibit 50; and, now, on behalf of the Applicants and Panhandle East- [fols. 551-552] ern, we offer Exhibit 50 as a part of the record.

Chairman Bond: Received.

Mr. Robinson: Applicants have stipulated with Natural Gas Pipe Line Company to the fact that Natural Gas Pipe Line Company can produce qualified witnesses to testify to the facts set forth on an instrument which has been identified by the Reporter as Exhibit 52, and that such facts

may be taken as proved and as if a witness had appeared, been sworn, qualified, and testified to the facts which are set forth in Exhibit 52.

Chairman Bond: Received.

Mr. Hayes: Perhaps the record should show that Exhibit 52 consists of a series of tabulations, but it is offered as one exhibit. Now, if the Court please, Natural Gas Pipe Line Company would also like to offer in evidence as Exhibit 53 a map which shows the principal gas field in Oklahoma and gathering lines. The exhibit has been submitted to counsel for Applicants and, I believe, may be admitted without objection.

Chairman Bond: Received.

* * * * * * *

[fol. 553] Mr. Hayes: There's one other point we would like to stipulate on and I believe we can and it involves the situation with regard to any prior gas price orders. That is, in fields other than Hugoton. There is no present effective order of this Commission which fixes a wellhead or other price for gas in any field in Oklahoma. It is true, I think, as recited in the opinion of the Supreme Court of [fol. 554] Oklahoma in the Peerless case that the Commission at one time did issue an order in the Cushing field. I think it is also true that recently applications have been filed before the Commission which seek the fixing of a price order. One of them is an application of the Anderson-Prichard Oil Company in Cause 3687. The other was an application by——

Mr. Green: That was never heard by the Commission.

Mr. Hayes: I didn't know abor that. Such application was, according to the records of the Commission, dismissed by the Applicant without decision. The other application was filed by Texas Consolidated Oils, Inc., against Cities Service Gas Company and Consolidated Gas Utilities Company and Ray Stephens, Inc., in Cause CD 3201. That a notice of hearing, directed to all operators, purchasers and takers of gas in the Cement Gas Field and Chickasha Gas Field and all other interested parties in Caddo County, Oklahoma, was issued by the Commission and that Cause

is still pending. The Cause has not been heard and no order has been issued therein. I think that correctly reflects the situation with regard to applications for and orders by the Commission relating to the fixing of the price of gas in Oklahoma, with the exception of the Guymon-Hugoton field.

[fol. 555] Mr. Green: There is one other case, Empire v. Oklahoma Natural, up here at Dewey, wherein the Supreme Court upheld an order of this Commission fixing the price. It fixed the price at the wellhead on one particular well.

Mr. Hayes: Well, if that's a correct statement, so far as anybody knows, I'll so indicate.

Mr. Robinson: As far as I know, that's correct.

Chairman Bond: Very good. Anything further, gentlemen?

Mr. Olson: If it please the Commission, I would like to say that Cities Service Gas Company has not filed any response or answer to the application of the Applicants in this case. In view of the way the case has turned and in view of the suggested order of Phillips and in view of the wording of the application, Cities Service Gas Company would like to be granted the privilege, if any orders are issued by the Commission, the right within 10 days to file its written legal objection, if any it has, to any order or orders and file it and make it a part of the record in this case.

Chairman Bond: Permission granted. That means you don't raise any new issues, you don't offer any testimony, you just file——

Mr. Olson: Based on the record.

[fols. 556-560] Chairman Bond: Based on the record? Very good.

Mr. Hayes: Natural Gas Pipe would like to ask permission to do the same thing. I'll tell the Commission frankly we had a response prepared, but it is no longer applicable. You will recall that at the outset of the proceedings there was some shifting of positions and we would like to do that without injecting any new issues and without offering any further evidence.

Chairman Bond: Permission granted.

* * * * * * *

[fols. 561-562] Chairman Bond: Anything further, gentlemen? The Commission will close the case and take it under advisement under the conditions as agreed to.

* * * * * * *

[fol. 563] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL Owners in Texas County, Oklahoma, for an order determining the minimum price at which gas produced from the Guymon-Hugoton Field may be first purchased or sold.

RESPONSE OF NATURAL GAS PIPELINE COMPANY OF AMERICA—Filed July 14, 1952

Comes now Natural Gas Pipeline Company of America, hereinafter referred to as Natural, and shows that it is a natural gas company within the meaning of the Natural Gas Act of 1938 and amendments thereto. It owns and operates under certificates of public convenience and necessity issued pursuant to said Act a natural gas pipeline transmission system which originates in the Panhandle Gas Field in Texas, with a lateral line originating in the Guymon-Hugoton Field in Texas County, Oklahoma, and extends into and through the states of Oklahoma, Kansas, Iowa, Nebraska and Illinois. It purchases residue gas, being a constitutent of natural gas, which is produced in the Guymon-Hugoton Field, and transports and sells the same with other gas for consumption in the states above mentioned (including the Chicago Metropolitan area) and the states of Wisconsin and Indiana.

[fols. 564-587] Natural objects to and protests against the entry of any order herein fixing or increasing the minimum wellhead price of natural gas produced in the Guymon-Hugoton Field, and any order, the effect of which would be to require Natural to pay for residue gas purchased by it

under existing contracts the minimum price fixed for raw natural gas at the wellhead. In this connection, Natural states that any such order would exceed any statutory or constitutional authority granted to the Commission, would be discriminatory, arbitrary and void, and violative of Sections 7 and 15 of Article 2 of the Constitution of Oklahoma and the Fourteenth Amendment to the Constitution of the United States, and would likewise impose a discriminatory and unlawful burden upon interstate commerce contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States, the protection of all of which constitutional provisions Natural hereby invokes.

Natural Gas Pipeline Company of America, by (S.) C. C. McDougald, D. H. Culton, Coleman Hayes, Its Counsel.

Filed: July 14, 1952, Secretary, Corporation Commission of Oklahoma.

[fol. 588] Before the Corporation Commission of the State of Oklahoma

Cause CD No. 3628

Order No. 26096

In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an order determining the minimum price at which gas produced from the Guymon-Hugoton Field may be first purchased or sold.

Report of the Commission—July 29, 1952

This cause came on for hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 20th and 21st days of February, 1952, at 10 o'clock, am, at which time all Commissioners were present and the case was heard.

The case was then continued to various dates and was finally heard on July 8th and 9th, 1952, and at the conclu-

sion of the testimony on July 9th all parties announced that they had rested, the case was closed, and the matter was taken under advisement.

At all hearings the following appearances were entered: Eizley, Tyron and Sweet, E. H. Lange and C. H. Hinton appeared for Panhandle Eastern Pipe Line Company; R. M. Williams, Kenneth Heady and Cecil C. Hamilton appeared for Phillips Petroleum Company; Mark Adams appeared for Northern Natural Gas Company; C. C. Kuhne, Coleman Hayes, D. H. Culton, Warren T. Spies, B. M. Britain appeared for Natural Gas Pipeline Company; T. [fol. 589] Murray Robinson and Dale & Dale appeared for applicants; L. T. Cramer appeared for Office of Price Stabilization; Joe Rolston and R. R. McCracken appeared for Cities Service Gas Company; Floyd Green, Conservation Attorney and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

Now, on this the 29 day of July, 1952, the Commission being in executive session, the matter comes on for further discussion and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the extent hereinafter set out and therefore finds as follows:

Findings

1. That this is an application of certain mineral owners in Texas County, Oklahoma for an order determining the minimum price at which gas in the Guymon-Hugoton Field may be first purchased or sold.

2. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law; that the cause was regularly set for hearing, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate [fol. 590] the hearinafter prescribed order.

3. That various interested parties have filed responses to the application and answers, some of which were filed during the course of the proceedings and some of which

by leave of the Commission were filed since the proceedings were closed.

4. That Mr. L. T. Cramer of the Office of Price Stabilization appeared and stated the position of that Federal Agency in respect to the application.

5. That under date of December 9th, 1946, the Commission issued its Order No. 19514, in Cause CD No. 1054, fixing the minimum price of 7¢ per thousand cubic feet of natural gas measured at a pressure base of 14.65 pounds absolute pressure per square inch for all gas taken out of the structures or formations in the Guymon-Hugoton Field, Texas County, Oklahoma; that said order was appealed to the Supreme Court of Oklahoma and the Supreme Court of the United States, both of which courts upheld the order of this Commission fixing said price and upheld the jurisdiction of the Corporation Commission to fix the price of gas in this particular field for the purpose of conservation and the protection of correlative rights.

6. That since the Commission issued its Order No. 19514, [fol. 591] the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch, constitutes and causes waste, both physical and economic.

7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevelant in said field results in and causes:

a. Economic waste of a great natural resource, to-wit: natural gas;
b. Actual physical waste of natural gas;
c. Loss to the royalty owners in said field;
d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;
e. Inequitable taking of natural gas from the common source of supply involved;
f. Discrimination against various producers in the field.

8. That the production of natural gas in the Guymon-Hugoton Gas Field is in excess of the market demand.

9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that [fol. 592] the price of 7¢ for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

10. That the representative of the Office of Price Administration stated in the record that a wellhead price for gas in said field of 9.8262¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch will not violate the orders of the Office of Price Administration.

11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable [fol. 593] service to the purchaser, in that said processing conditions said gas for pipe line transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial investments and incur substantial expenses in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid

hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment; and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F.

12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for [fol. 594] normal uses equal to that of the average gas produced from the Guymon-Hugoton Field, but that residue gas having less than 950 BTU per cubic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such residue gas should be in the proportion that the BTU content of such gas bears to 950 BTU per cubic foot.

13. That for the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants.

[fol. 595] ORDER

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if

sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic feet of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal [fols. 596-649] Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic foot.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

Done and performed by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29 day of July, 1952.

Corporation Commission of Oklahoma, (S) Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: (S) Tona McMurray, Secretary.

[650] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

* * * * * * *

MOTION TO VACATE ORDER AND FOR NEW TRIAL—Filed July 31, 1952

Protestant, Natural Gas Pipeline Company of America, moves the Commission to vacate and set aside the order entered in the above entitled cause on July 29 1952, and to grant a new trial in such proceeding. Protestant is aggrieved thereby, and says that in entering said order the Commission erred to the prejudice of protestant, materially affecting protestant's substantial rights. In support of such motion protestant says:

1. The order is wholly beyond the jurisdiction of the Commission under the statutes and constitution of the States of Oklahoma.

2. Such order is contrary to the evidence and is not supported by any evidence of probative value.

3. The order is contrary to the law.

4. The order is violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States and of the due process clause of the Oklahoma Constitution in that it deprieves protestant of its property and property rights without due process of [fol. 651] law.

5. The order is violative of the Commerce Clause of the Constitution of the United States, and constitutes a burden on the operations of this protestant in interstate commerce.

6. The order is violative of protestant's contractual rights, in violation of Section 10, Article 1 of the Constitution of the United States, and deprives protestant of valuable rights under existing contracts.

7. The order constitutes a taking by the Commission of protestant's property rights and contractual rights for a purported public benefit, but in fact primarily a private benefit, without compensation, in violation of the due process clauses of the State and Federal Constitutions.

8. The order, while purporting to be one entered in the public interest, is in fact one primarily in the interest of private corporations, both of which are incorporated under the laws of the State of Delaware, namely, Phillips Petroleum Company and the Panoma Corporation, and entered for the purpose of relieving such corporations from the burdens of contracts entered into at arm's length and to impose, as a result thereof, burdens on the consumers of gas in the states of Iowa, Illinois, Wisconsin, Michigan, Indiana, Ohio, Kentucky, and other states where consumers [fol. 652] utilize residue from natural gas produced in Oklahoma; and such local benefits, if any, as may accrue are only incidental to such private relief.

9. The order goes beyond any necessities which may exist for the protection or accommodation of any public interest, if any, which may require protection.

10. Such order is violative of the Constitution of the State of Oklahoma in that it is not an order of general application within the State of Oklahoma, and the record reflects no facts which in law authorize the Commission to enter an order of such limited scope.

11. The order is discriminatory, in violation of the applicable provisions of both the State and the Federal Constitutions, in that it permits those who purchase gas at the wells to profit from future increases in the value of liquefiable constituents contained in such gas without giving protestant, who purchases only residue gas, any relief in the event the values of such liquefiable const-uents shall hereafter be increased.

12. The attempt by the Commission to fix and determine the cost of gathering gas and operations of a gasoline plant is beyond the statutory powers of the Commission, and is accomplished by the order in an arbitrary manner, without adequate evidence on which to determine such costs, [fols. 653-654] and the reasonable profits for operating such a plant.

Natural Gas Pipeline Company of America, by (S.) Coleman Hayes, One of its Attorneys.

* * * * * * *

[fol. 655] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF APPEAL, REQUEST FOR PREPARATION OF RECORD AND CERTIFICATION OF FACTS AND RECORD TO THE SUPREME COURT—Filed July 31, 1952.

Natural Gas Pipeline Company of America, a protestant in the above entitled cause, being affected and aggrieved by Order No. 26096 made and entered in this cause by the Corporation Commission of the State of Oklahoma on July 29, 1952, hereby gives notice of its intention to appeal from said order to the Supreme Court of the State of Oklahoma and requests that this notice of appeal be duly entered upon the proper dockets of the Commission as provided by law.

For the purpose of perfecting said appeal, the said Natural Gas Pipeline Company of America respectfully requests that the court reporters for said Commission be directed to transcribe and prepare a full and complete record of all pleadings, evidence, exhibits, orders, notices and testimony which were filed, given, made or introduced in the above entitled cause and that the chairman of the Commission certify to the Supreme Court of the State of Okla- [fols. 656-657] homa under the seal of the Commission and transmit to the clerk of said Court a true and complete transcript of the record so prepared together with a written statement of the reasons upon which the order appealed from was based.

Dated this 31st day of July, 1952.

Natural Gas Pipeline Company of America, by (S.) Coleman Hayes, One of Its Attorneys.

[File endorsement omitted.]

* * * * * * *

[fols. 658-659] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER OVERRULING MOTION TO VACATE ORDER AND FOR NEW TRIAL—July 31, 1952

Now on this 31st day of July, 1952, the motion of protestant, Natural Gas Pipeline Company of America to vacate and set aside the order entered herein on the 29th day of July, 1952, and to grant protestant a new trial coming on for hearing, the Commission, having examined said motion, and having heard the argument of counsel and being fully advised, finds that said motion should be and the same is hereby in all things overruled, to which ruling of the Commission protestant excepted and its exceptions are allows-:

(S.) Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, Ray C. Jones, Member.

[File endorsement omitted.]

[fol. 660] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

STIPULATION—Filed July 31, 1952

The following facts are stipulated by the undersigned, and may be considered as evidence as if testified to by qualified witnesses:

1. Michigan-Wisconsin Pipe Line Company, hereinafter called Michigan-Wisconsin, is a Delaware corporation having its principal place of business in the city of Detroit, Michigan. It is neither qualified nor authorized to do business in the State of Oklahoma.

2. Michigan-Wisconsin Pipe Line Company owns a natural gas pipe line system originating in the State of Texas and extending through Oklahoma, Kansas, Nebraska, Mis-

souri, Iowa, Wisconsin, Illinois, Indiana, and Michigan. It operates such system under Certificates of Public Convenience and Necessity issued by the Federal Power Commission.

3. Substantially all of the gas purchased by Michigan-Wisconsin and transported through its pipe line system is [fol. 661] produced in the states of Texas and Oklahoma. In addition thereto, it is now purchasing a small amount of gas from leased acreage in the state of Kansas. In the states of Texas and Oklahoma the Phillips Petroleum Company, hereinafter called Phillips, is its sole supplier. The gas so purchased and transported is sold by Michigan-Wisconsin in the states of Missouri, Iowa, Wisconsin, and Michigan, to utilities located in the aforesaid several states, for resale by the said utilities for domestic, commercial, industrial and other uses.

Michigan-Wisconsin is a "Natural Gas Company" as defined in the Federal Natural Gas Act, and, under the applicable provisions of that Act is subject to the jurisdiction of the Federal Power Commission.

4. With respect to the purchase of natural gas produced from the Guymon-Hugoton Field of Oklahoma, Michigan-Wisconsin operations had their inception with the execution of a gas purchase contract between Michigan-Wisconsin and Phillips, dated December 11, 1945. A copy of this contract, with the amendments thereto, is hereto attached and marked Exhibit "A". Thereafter, and on December 1, 1949, the said parties entered into a contract known as the "Stratford Acreage Contract", a copy of which is hereto attached and *and* marked Exhibit "B", and on the [fol. 662] date last recited the said parties entered into a contract known as the "Gas Below Sea Level Contract", a copy of which is hereto attached and marked Exhibit "C". The latter contracts do not pertain to gas produced from the Guymon-Hugoton Field.

Under the provisions of the contract dated December 11, 1945, as amended, Michigan-Wisconsin began the purchase of gas in the year 1949.

5. Under the provisions of the contract of December 11, 1945, the gas produced from the Guymon-Hugoton Field in Oklahoma by Phillips is gathered through Phillips'

gathering system into the state of Texas, and said raw gas is in the state of Texas co-mingled with gas produced from the state of Texas. Phillips compresses and processed the raw gas produced from its wells in Oklahoma and Texas and the residue is then sold and delivered to Michigan-Wisconsin in Hansford County, Texas. Title to the said gas so produced by Phillips does not pass into Michigan-Wisconsin until it is delivered at the meter of Michigan-Wisconsin in Hansford County, Texas.

6. Michigan-Wisconsin does not own any oil and gas leasehold estates in the State of Oklahoma, nor does it produce gas in the State of Oklahoma, nor sell gas in said State. Its sole properties in the State of Oklahoma consist of a 24 inch pipe line crossing the Counties of Texas [fols. 663-673] and Beaver, together with gate valves used in connection therewith.

Dated this July 31, 1952.

(S.) T. Murray Robinson, Attorneys for Applicant, Kerr, Lambert, Conn & Roberts. (S.) by Jack T. Con, Attorneys for Michigan-Wisconsin Pipe Line Company.

Approved: (S.) Floyd Green, Attorneys for the Corporation Commission.

[fol. 674] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35731

NATURAL GAS PIPELINE COMPANY OF AMERICA, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants in Error.

No. 35732

MICHIGAN-WISCONSIN PIPE LINE COMPANY, Plaintiff in

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants in Error.

SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR—Filed Dec. 14, 1953

STATEMENT

The principal question here presented—there are, of course, others which are exhaustively treated in the briefs—is whether the Corporation Commission of the State of Oklahoma has jurisdiction to fix the price of residue gas, one constituent of natural gas, after the natural gas has been produced, gathered, transported and processed. That [fol. 675] issue has now been determined adversely to defendants in error, and it is the purpose of plaintiffs in error, Natural Gas Pipeline Company of America, hereinafter referred to as Natural, and Michigan-Wisconsin Pipe Line Company, hereinafter referred to as Michigan-Wisconsin, by this Supplemental Brief to apprise the Court of the status of the litigation in which such determination was made.

Wisconsin v. Federal Power Commission[1]

After a lengthy hearing before the Federal Power Commission, that Commission, with one member dissenting,

[1] 205 F. 2d 706.

held that it had no authority to fix the rates at which Phillips Petroleum Company, a defendant in error here, sells gas for interstate transportation and resale. Under consideration in that proceeding were sales by Phillips to Michigan-Wisconsin and to Panhandle Eastern, they being the identical sales involved here in No. 35732 and No. 35734.

On May 22, 1953, the United States Court of Appeals, District of Columbia Circuit, upon review of the Federal Power Commission's order, reversed and concluded not only that the Federal Power Commission has such authority, but that the various states, acting through regulatory bodies such as the Corporation Commission of this State, have no such power.

As was to be expected, Phillips and counsel for the Federal Power Commission placed great emphasis upon the opinions of this Court and the Supreme Court of the United States in the *Cities Service* case. Of the effect of that case, the Court of Appeals said:

> [fol. 676] "Since Phillips' sales are made after the gas has been gathered into trunk lines *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 1950, 340 U. S. 179, 71 S. Ct. 215, 95 L. Ed. 190, is irrelevant."[2]

Speaking of the precise sales here involved to Panhandle Eastern and Michigan-Wisconsin, as well as others, the Court said:

> "The Commission finds that the sales involved here are sales in interstate commerce of natural gas for resale. That finding is not disputed. *It follows that no state can regulate these sales.* It was plain long before the Natural Gas Act was passed that 'state regulatory power could not reach high-pressure trunk lines and sales for resale. This was the "gap" which Congress intended to close'." (Emphasis supplied)

Thus the Court of Appeals determined, first, that *Cities Service* is irrelevant where sales are made after production

[2] Footnote 9, page 740.

and gathering into trunk lines have been accomplished, and second, that where natural gas is sold for resale in interstate commerce, "* * *" no state can regulate these sales."

The opinion of the Court of Appeals had been promulgated at the time Natural filed its Reply Brief in No. 35731. It was called to the Court's attention at pages 6 and 14 of that brief, which was adopted by Michigan-Wisconsin in its Reply Brief in No. 35732.

On November 30, 1953, the Supreme Court of the United States denied applications for *certiorari* filed on behalf of Phillips, Federal Power Commission and the State of [fol. 677] Texas, thus permitting the opinion and judgment of the Court of Appeals for the District of Columbia to stand.

The concluding sentence in that opinion is as follows:

> "Therefore Phillips is a 'natural-gas company' within the meaning of the Natural Gas Act and the Commission should fix the rates at which these sales are made."

If Phillips is a "natural-gas company", Panoma is likewise a "natural-gas company."

The Court of Appeals, in discussing *Missouri ex rel. Barrett v. Kansas Natural Gas Co.*, 265 U. S. 298, 309, 308, 44 Sup. Ct. 544, 546, 67 L. Ed. 1027, said:

> "In that case most of the gas was sold after it crossed state lines, whereas in this case it is sold before it crosses the state line, but as appears later, this difference is immaterial."

The record here discloses that all sales to Natural and to Michigan-Wisconsin are made for resale in interstate commerce. Deliveries are made at the outlet of gasoline plants only after the raw natural gas has been produced, gathered through trunk lines, transported to a gasoline plant,[3] and there separated into its marketable constituents

[3] The sales of residue gas to Michigan-Wisconsin and Panhandle Eastern are made in Texas after natural gas, a portion of which is produced in Oklahoma, has been processed in plants located in the State of Texas.

of liquefied hydrocarbons and residue gas by Phillips and Panoma. In such circumstances, the order of the Corporation Commission is clearly beyond its power and authority.

[fols. 678-681] CONCLUSION

Natural and Michigan-Wisconsin have at all times, first before the Commission, later in their petitions in error in this Court, and in all of their briefs, asserted a complete lack of jurisdiction in the Corporation Commission to make the order here under review. The Court of Appeals has placed upon Cities Service the restrictions and limitations urged by Natural and Michigan-Wisconsin, and definitely denied the existence of jurisdiction in the Corporation Commission of the State of Oklahoma to fix the price at which the sales here involved are made. The Supreme Court of the United States has refused even to review that decision, the effect of which is, by construction of the Natural Gas Act, to place the exclusive power and authority to fix such prices in the Federal Power Commission. Since "* * * no state can regulate these sales", it inevitably follows that the order of the Corporation Commission attempting to do so should be set aside.

Respectfully submitted, C. C. McDugald, W. T. Spies, D. H. Culton, Coleman Hayes, Attorneys for Natural Gas Pipeline Company of America;

Jack T. Conn, D. H. Culton, Coleman Hayes, Arthur R. Seder, Jr., Attorneys for Michigan-Wisconsin Pipe Line Company.

December, 1953.

[fol. 682] In the Supreme Court of the State of Oklahoma

No. 35731

Natural Gas Pipeline Company of America, Plaintiff in Error,

v.

The Corporation Commission of the State of Oklahoma, et al., Defendants in Error.

No. 35732

Michigan-Wisconsin Pipe Line Company, Plaintiff in Error,

v.

The Corporation Commission of the State of Oklahoma, et al., Defendants in Error.

No. 35734

Panhandle Eastern Pipe Line Company, Plaintiff in Error,

v.

The Corporation Commission of the State of Oklahoma, et al., Defendants in Error.

Supplemental Brief of Defendant in Error Phillips Petroleum Company— Filed Feb. 12, 1954

[fol. 683] In oral argument plaintiffs in error for the first time argued that the decision of the United States Court of Appeals for the District of Columbia Circuit in Wisconsin v. Federal Power Commission, 205 F. 2d 706 (1953), is controlling of the issues in these cases. On the day following the oral argument Phillips was served with a supplemental brief by plaintiffs in error Natural Gas Pipeline Company of America and Michigan-Wisconsin Pipe Line Company further arguing the controlling effect of such decision.

It is to answer this new contention that this supplemental brief is filed.

The decision in Wisconsin v. Federal Power Commission has no bearing on these cases.

The basis of plaintiffs in error's argument is that the Circuit Court in the Wisconsin case held that the Federal Power Commission has jurisdiction under the Natural Gas Act, 15 U. S. C. § 717 et seq., to regulate sales by Phillips of residue from the gas here involved and that the order of the Corporation Commission is an attempt to regulate the same sales and for that reason invalid.

Since the oral argument and filing of Natural and Michigan-Wisconsin's supplemental brief herein, the Supreme Court of the United States on January 19, 1954, granted certiorari in the Wisconsin case and hence the decision [fol. 684] relied upon by plaintiffs in error is not final. Assuming it to be final, however, it has no bearing here.

The argument of plaintiffs in error in such regard is subject to the same fallacy present in their argument in respect to the commerce clause, namely, that the order of the Corporation Commission is an attempt to directly regulate the sales of gas after gathering or after gathering and processing, as distinguished from an order regulating its production.

The jurisdiction of the Federal Power Commission, if it has jurisdiction (which we deny), is of the sale itself after production and gathering. It attaches after production has occurred and the gas is available for sale. The Natural Gas Act in defining the jurisdiction of the Federal Power Commission expressly excludes the "production and gathering" of gas, 15 U. S. C. § 717(b).

The order of the Oklahoma Corporation Commission is not a regulation of the sale but of production, which in the interest and for purposes of conservation and protection of correlative rights establishes what a producer must obtain for the gas, no matter where or how sold, as a condition to the right to produce. Although affecting the sale price, its impact is on the producer before production and before the gas is available for sale.

Plaintiffs in error in their briefs and in oral argument recognize the power and authority of the Corporation Commission to make such an order prohibiting production un- [fol. 685] less and until the producer obtains a prescribed

minimum price or its equivalent at the wellhead. Such was the decision of this Court and of the Supreme Court of the United States in the case of Cities Service Gas Co. v. Peerless Oil & Gas Co., 203 Okl. 35, 220 P. 2d 279, affirmed 340 U. S. 179, 95 L. ed. 190. This Court in the Cities Service case said:

> "We do not perceive that the commerce clause of the Federal Constitution precludes the state in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom may have contracted or will contract for sale and delivery of his share of the production outside the state, or because a purchaser from such producer will sell and transport the gas in interstate commerce." (220 P. 2d 291.)

And again:

> "The regulation applies to the production of natural gas and though it results in an incidental effect upon the sale price for gas after the gas has been reduced to possession, the subsequent sale of the gas for delivery into another state does not brand the Commission order as a regulation of interstate commerce. The regulation is imposed before any operations of interstate commerce occur." (220 P. 2d 290-291.)

If the fixing of a "minimum price consideration as a condition of the taking of natural gas from a common reservoir", even though "it results in an incidental effect upon the sale price of gas" delivered "into another state", does not "brand" the order "as a regulation of interstate commerce" and is not violative of the commerce clause, [fol. 686] as held by this Court and affirmed by the Supreme Court of the United States in the Cities Service case, such an order cannot be invalid as violating the jurisdiction of the Federal Power Commission, which is derived under the commerce clause.

In order then for plaintiffs in error to argue the controlling effect of Wisconsin v. Federal Power Commission they must first establish that the Commission order is an

attempt to directly regulate the sales of gas after gathering or of residue, as distinguished from a regulation of production conditioned on what the producer gets for the gas. This they seek to do by misreading the order and asserting without foundation that it is the former. The validity of such assertion is vital to their argument. If it fails, the whole argument with respect to Wisconsin v. Federal Power Commission and the commerce clause fails.

The erroneous basis for the assertion that the order is one directly regulating the sale of the gathered or residue gas, as distinguished from an order regulating production, was most concisely stated and illustrated in the oral argument of Mr. Coleman Hayes, attorney for Natural Gas Pipeline Company. He emphasized that these cases should turn upon what the order says and then undertook to demonstrate that the order was merely one establishing a price for the gas after gathering and processing by referring only to the second and third, and particularly the [fol. 687] third, sentences of Paragraph 1 of the Commission's order, which read as follows:

> "If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet." (R.549.)

The first sentence of the same paragraph and which immediately precedes the two just quoted, but which Mr. Hayes did not read, is as follows:

> "That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized." (R. 549.)

We agree with the statement that these cases should turn upon "what the order says" but assert that the order must be read and interpreted in its entirety and that its meaning is not to be determined by the reading of one or two isolated sentences. This Court has said that in considering a legislative enactment it is not safe to base a construction upon a particular word or phrase but that the several provisions thereof must be construed together in the light of its general purpose and object. Meads v. Human, 84 Okl. 82, 202 P. 797 (1921).

[fol. 688] Plaintiffs in error completely ignore the fact that the two sentences on which they rely, standing alone, are meaningless and can be given meaning only when read in conjunction with the first sentence of the paragraph and the findings upon which the order is based. Both sentences begin with the words "If the gas". What gas? To know what gas the sentences are talking about, it is necessary to refer to the first sentence, which says, "That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price", etc. Both sentences recite that "the price" shall be, etc. What price, payable by whom to whom, and for what purpose? Again it is necessary to refer to the first sentence to determine that it is "the price" that must be obtained by the producer as a condition to production.

Taken together, the three sentences which comprise the first paragraph of the order merely and clearly prescribe the price, or its equivalent, the producer must obtain at the wellhead as a condition to the production of the gas. Under the first sentence the gas if sold "at the wellhead or on the lease or drilling unit from which produced" must bring 9.8262¢ per thousand cubic feet, or, if sold or otherwise utilized "off the lease or drilling unit", it must be a price "equivalent" to such wellhead price. The second and third sentences are merely supplemental to the first sentence and spell out and for clarity define what is required to constitute the "equivalent" of the wellhead [fol. 689] price under certain named circumstances prevalent in the field where the gas is not sold at the wellhead.

That this is the true meaning of the order is made doubly clear by the findings on which the order is based.

In Finding No. 6 the Commission said that general commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that "the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead * * *, constitutes and causes waste, both physical and economic."

In Finding No. 11 the Commission said:

> * * * and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; * * * and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet * * *."

In Finding No. 13 the Commission said:

> "That for the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formation in the Guymon-Hugoton Field, at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a [fol. 690] pressure of 14.65 pounds absolute pressure per square inch."

The first sentence under the subheading "Order" reads: "It Is therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:".

Then follows Paragraph 1 of the order containing the three sentences, two of which were singled out and relied upon by Mr. Hayes in his argument.

It is thus clear that the findings and all portions of the order are to be read and treated as an entirety. When thus read it is clear that the provisions with respect to the price of gas after gathering and of the residue where processed are but a means of determining whether or not the equivalent of the wellhead price has been obtained where the gas is first gathered or processed by the producer before being sold. The order is one to regulate the production of gas; not the sale price of the residue. If such an order is not valid then the requirement, heretofore held to be valid, that no gas be produced unless the producer obtains the equivalent of a certain price at the wellhead, could be easily and simply avoided by merely selling the gas elsewhere than at the wellhead.

The order thus interpreted is in substance and effect no different from the original 7¢ order sustained by this Court and the United States Supreme Court in the Cities Service case but merely says in express language what the [fol. 691] Commission and the Court have said that the 7¢ order was intended or by implication said.

The Corporation Commission in its Order No. 19702, entered upon application of Phillips to clarify the 7¢ order in respect to gas which before being sold was first gathered and processed, in part the same gas and the identical method of operation here involved, which order was before this Court and affirmed in the Cities Service case, said:

> "5. * * * that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet * * *, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead * * *."

And again:

> "6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, * * *."

Thus the 7¢ order involved in the Cities Service case was intended to and did in effect provide that in respect to gas not sold at the wellhead the producer as a condition to his right to produce must obtain therefor, no matter where sold or utilized, the equivalent of the wellhead price. The only difference then between that order and the 9.8262¢ [fol. 692] order here involved is that under the 7¢ order the producer had the burden of determining for himself whether in instances where the gas was sold or utilized elsewhere than at the wellhead, he was receiving the equivalent of 7¢ per thousand cubic feet at the wellhead, whereas under the 9.8262¢ order here involved the Commission stated more clearly what would constitute the equivalent of the wellhead price under such circumstances. So far as constituting a regulation of the price to be received for the gathered or residue gas is concerned, the effect of the two orders is identically the same. This Court and the Supreme Court of the United States having sustained as valid the 7¢ order, it follows that the 9.8262¢ order is likewise valid.

If the Commission has no control over the price received by the producer where the gas is gathered or processed before being sold, it would have no control whatever over producers like Phillips who do not sell their gas at the wellhead. Yet, in the case of Phillips Petroleum Co. v. State of Oklahoma, 340 U. S. 190, being Phillips' appeal to the United States Supreme Court from the 7¢ price order, that court said: "In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any." Thus, to say that the Commission cannot now prescribe what Phillips and other pro- [fol. 693] ducers similarly situated must get for their gathered or residue gas is to say that it is without power to regulate any, the effect of which would be to reverse the decision by this Court and the United States Supreme Court sustaining the 7¢ order in the Cities Service case.

If the order in question is one designed to regulate the production of gas for the purpose of conservation, the protection of correlative rights, or other purpose of legitimate state interest, then the fact that such order may in

effect conflict with the powers of the Federal Power Commission under the Natural Gas Act does not mean that the order is for that reason invalid, because under such circumstances the United States Supreme Court in the case of Interstate Natural Gas Co. v. Federal Power Commission, 331 U. S. 682, 690 (1947), has said the power of the state would take precedence and the jurisdiction of the Federal Power Commission would not attach. In respect to the exemption of "production and gathering" under the Natural Gas Act, the court in that case said:

> "The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas in which the States are constitutionally competent to act. Thus the House Committee Report states: 'The bill takes no authority from State Commissions, and is so drawn as to complement and in no manner usurp State regulatory authority * * *.' Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the in- [fol. 694] tention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commossion inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach."

The power of the state and the Corporation Commission is therefore not dependent upon whether there will be a conflict with the jurisdiction and regulations of the Federal Power Commission. On the contrary, the power to enact regulations for the conservation of gas or otherwise regulating the production of gas has been expressly reserved to the states. The order here involved constitutes a valid exercise of that reserved power.

Certainly, in view particularly of the above language of

the Supreme Court of the United States, this Court should not abdicate state powers upon the suggestion of possible conflict.

Conclusion

Wisconsin v. Federal Power Commission is wholly irrelevant to any issues herein. Plaintiffs in error's argument concerning it adds nothing to show that the Commission's order is invalid. On the contrary, the decisions of the United States Supreme Court under the Natural Gas Act serve to strengthen the validity of the order. For [fols. 695-698] these reasons and for the reasons stated in our earlier briefs, we respectfully request that the Commission's order be affirmed.

Respectfully submitted, Rayburn L. Foster, Harry D. Turner, R. M. Williams, Kenneth Heady, Bartlesville, Oklahoma; Cecil C. Hamilton, 1211 First National Building, Oklahoma City, Oklahoma. Attorneys for Defendant in Error, Phillips Petroleum Company.

February, 1954.

* * * * * * *

[fol. 699] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35731

NATURAL GAS PIPELINE COMPANY OF AMERICA, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., Defendants in Error.

No. 35732

MICHIGAN-WISCONSIN PIPE LINE COMPANY, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., Defendants in Error.

RESPONSE OF PLAINTIFFS IN ERROR, NATURAL GAS PIPELINE COMPANY OF AMERICA AND MICHIGAN-WISCONSIN PIPE LINE COMPANY—Filed March 22, 1954

Statement

Eight weeks after these cases were orally argued, Phillips Petroleum Company filed a "Supplemental Brief" in the above cases and in *No. 35734, Panhandle Eastern Pipe* [fol. 700] *Line Company* v. *The Corporation Commission of the State of Oklahoma et al.* It is the purpose of Natural and Michigan-Wisconsin to respond briefly to the contentions made in such Supplemental Brief, and to suggest to the Court that decisions in these cases be deferred pending final disposition of several cases now pending in the Supreme Court of the United States which are believed to be highly material, if not actually controlling, here.

State of Wisconsin v. Federal Power Commission [1]

At the time of the argument of these cases, the Supreme Court of the United States had denied certiorari to the

[1] 205 F. 2d 706.

Court of Appeals for the District of Columbia. Subsequently, certiorari was granted and it is understood that the case will probably be argued about April 6, 1954. The opinion of the Court of Appeals contains three positive conclusions. After pointing out that the sales there involved (they were the identical sales here involved by Phillips to Panhandle and Michigan-Wisconsin) "are sales in interstate commerce of natural gas for resale," the Court stated: "It follows that no state can regulate these sales." In discussing the provisions of the Natural Gas Act, the Court of Appeals further held: "The exemption of production or gathering does not exempt sales made after production and gathering have been completed." The concluding sentence in the opinion is as follows: "Therefore, Phillips is a 'natural gas company' within the meaning of the Natural Gas Act, and the Commission should fix the rates at which these sales are made."

[fol. 701] Cities Service Gas Company v. Peerless Oil & Gas Company [2]

As has been true since the inception of this litigation, Phillips places great emphasis upon the decision of this Court and that of the Supreme Court of the United States in the so-called Cities Service case. The substance of the holding in that case is contained in a quotation therefrom appearing at page 4 of Phillips' Supplemental Brief. It will be noted that in that case the Court conceived the regulation to result only "in an incidental effect upon the sale price for gas," and that "the regulation is imposed before any operations of interstate commerce occur." The record in this case discloses, and it cannot be successfully contended otherwise, that the present regulation,[3] rather than having only an "incidental effect" upon the sale price of gas, specifically fixes that price, and furthermore that the

---

[2] 340 U. S. 179.

[3] The order here involved provides, "If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262 cents per thousand cubic feet."

regulation, instead of being imposed before any operation of interstate commerce occurs, is imposed at a time and place wher the gas "is not only actually committed to but is moving in interstate commerce."[4]

The *Cities Service* case was urged upon the Court of Appeals in the *Wisconsin* v. *Federal Power Commission* case. That Court disposed of the contention by simply pointing out that the sales by Phillips are made after the [fol. 702] gas has been gathered into trunk lines and therefore *"Cities Service Gas Company v. Peerless Oil & Gas Company*, 340 U. S. 179, *is irrelevant."*

The limited nature of the holding in the *Cities Service* case was also pointed out by the Court of Appeals for the Eighth Circuit in *State Corporation Commission of Kansas* v. *Federal Power Commission*.[5] The Court there held that the Kansas "attribution" order could not be enforced as to production in that state by a natural gas company which sells its gas in interstate commerce. The Kansas case is now pending before the Supreme Court of the United States on petition for rehearing after denial of certiorari.

Michigan-Wisconsin Pipe Line Company v. Robert S. Calvert et al. and Panhandle Eastern Pipe Line Company v. Robert S. Calvert et al.[6]

Subsequent to the argument in these cases, the Supreme Court of the United States in a unanimous opinion held a so-called "gathering tax" statute of the State of Texas unconstitutional because violative of the Commerce Clause of the Constitution of the United States. There were involved in those cases the identical sales by Phillips to Michigan-Wisconsin and Panhandle Eastern here involved. The Texas statute purported to impose a tax upon the "gathering of natural gas" in that state. The tax was measured "by the entire volume of gas 'taken'

---

[4] Michigan-Wisconsin Pipe Line Company, Appellant v. Robert S. Calvert et al., decided February 8, 1954, by the Supreme Court of the United States.

[5] 206 F. 2d 690.

[6] Decided by the Supreme Court of the United States on February 8, 1954, but not yet reported.

as applied to an interstate natural gas pipeline company." According to the opinion, "The taxable incidence is the [fol. 703] taking of gas from the outlet of an independent gasoline plant within the state for the purpose of immediate interstate transmission."

There, as here, much emphasis was placed upon the fact that "These conservation and proration measures has (have) afforded great benefits and protection to pipeline companies." The Court observed that such considerations are important only in determining whether the requirements of due process have been met and that the objections there made were based on the Commerce Clause. In speaking of the incidence of the tax, the Supreme Court pointed out, "This event, as stipulated, occurs after the gas has been produced, gathered and processed by others than appellants." In such circumstances the Court concluded, "We are, therefore, of the opinion that the taking of the gas here is essentially a part of interstate commerce itself," and further, "but the tax here is not levied on the capture or production of the gas, but rather on its taking into interstate commerce after production, gathering and processing." Petitions for rehearing were denied in these cases on March 15, 1954.

Interstate Natural Gas Co. v. Federal Power Commission [7]

Phillips relies in its Supplemental Brief upon the *Interstate Natural Gas Company* case, and quotes excerpts from that opinion which have to do with the exemptions contained in the Natural Gas Act. The *Interstate* case was urged upon the Court of Appeals in the *State of Wisconsin* v. *Federal Power Commission* case. That Court discussed [fol. 704] at some length the holding and implications of that case, noting that among the powers reserved to the states under the Natural Gas Act "is the power to regulate the physical production and gathering of natural gas * * *." No question of the right of the Commission to regulate the "physical" production and gathering of natural gas is here involved. Rather, the question is, may the Corporation

[7] 331 U. S. 682.

Commission validly fix the price at which residue gas is sold after production, gathering and processing have occurred "to pipeline companies for resale in other states." In *State of Wisconsin* v. *Federal Power Commission*, the *Interstate* case was held to support rather than conflict with the conclusion there reached.

Phillips Petroleum Company v. State of Oklahoma [8]

It is again urged that the order here involved should be sustained because of a statement made by the Supreme Court of the United States in a companion case to the *Cities Service* case that the Corporation Commission should be able to regulate all producers or there is little point in regulating any.

A complete answer to Phillips' contention is that the Court was there dealing with a wellhead price, and that the Commerce Clause was not involved. Questions of propriety and policy within the power or jurisdiction of the Commission are not here involved. The Commission either has the power to fix the price of residue gas after production, gathering and processing have occurred and the gas [fol. 705] is actually moving in interstate commerce or it has no such power. This issue is clearly presented in *State Corporation Commission of Kansas* v. *Federal Power Commission*. The Court of Appeals for the Eighth Circuit evidently found no merit in the contention here made by Phillips, for it clearly differentiated between the situation of an interstate pipeline company which produces its own gas and that of producers which are not natural gas companies under the Natural Gas Act.

The Present Order

The order here involved, unlike that which was before this Court and the Supreme Court of the United States in the *Cities Service* case, is not one which "is imposed before any operations of interstate commerce occur." [9] On

[8] 340 U. S. 190.

[9] Cities Service Gas Company v. Peerless Oil & Gas Company, supra.

the contrary, its impact is upon the sale at the outlet of a gasoline plant of the residue constituents after the gas has been produced, gathered, and processed. In plain and unmistakable language the order so states, and the fact that the residue is a portion of natural gas which was produced in the regulated field is of no consequence if the incidence of the regulation is upon the sale itself.

It will not do to argue as Phillips does, that notwithstanding the clear language of the order it merely constitutes a formula by which an equivalent of the wellhead price is determined. It is admitted that the practical effect of the order on the pipeline companies is to give them a choice between paying the increased price or suffering the loss of their supplies of gas, either of which constitutes a [fol. 766] real and serious regulation of interstate commerce. In *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 112, the Supreme Court said:

> "It is the established doctrine of this court that a State may not, in any form or under any guise, directly burden the prosecution of interstate business."

Whatever the dialectics employed, therefore, the practical result of the Commission's regulation is to regulate interstate commerce in a manner violative of the Commerce Clause of the Federal Constitution.

The fact that the present order contains separate paragraphs relating to different situations, instead of sustaining Phillips' contention, simply demonstrates beyond all doubt that the Commission deliberately and intentionally divided the procedure followed by producers into three distinct categories, (1) where gas is sold at the wellhead; (2) where gas is sold during or at the conclusion of gathering but before processing; and (3) where the gas is sold after it has been processed.

It would seem that this belabored reasoning is simply an ingenious effort to save the order which, if construed according to its plain meaning and intent, must fall.

In a similar effort the Commission, in its Brief in No. 35731, at page 66, says: "If the order is not complied with by a producer he might be prohibited from producing, and

that is all" (Emphasis supplied). At page 96 of the same Brief it is said: "The purchaser is not violating the Commission's order by buying gas for less than the minimum price. *Coercive Action can be taken only against the pro-* [fol. 707] *ducer at the point where the gas is produced"* (Emphasis supplied).

These statements are simply beyond comprehension when viewed in the light of the fact that in the *Panoma* case (No. 35203), the Commission actually entered a "coercive order" against Natural, and seeks in this Court affirmance of that order.

Conclusion

If, (1) as held by the Court of Appeals in *State of Wisconsin* v. *Federal Power Commission*, "* * * no state can regulate these sales," and "the exemption of production or gathering does not exempt sales made after production and gathering have been completed," and "* * * the Commission should fix the rates at which these sales are made," and as pointed out, since the sales by Phillips are made after the gas has been gathered into trunk lines, "*Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U. S. 179, is irrelevant," or (2) as held by the Supreme Court of the United States in the Texas gathering case, "* * * the taking of the gas here is essentially a part of interstate commerce itself," the order here involved cannot stand.

Since the Wisconsin and Kansas cases are pending in the Supreme Court, the Wisconsin case for argument, and the Kansas case on petition for rehearing after denial of certiorari, it would seem that this Court might well defer decisions in these cases pending final disposition of those above referred to by the Supreme Court of the United States.

[fol. 708] This suggestion is made notwithstanding the sincere belief that the order here is invalid for the additional reasons presented in the original and reply briefs of plaintiffs in error, and should for these reasons be set aside

irrespective of the final action of the Supreme Court of the United States, in the cases there pending.

Respectfully submitted, C. C. McDugald, W. T. Spies, D. H. Culton, Coleman Hayes, Attorneys for Natural Gas Pipeline Company of America; Jack T. Conn, D. H. Culton, Coleman Hayes, Arthur R. Seder, Jr., Attorneys for Michigan-Wisconsin Pipe Line Company, Plaintiffs in Error.

March, 1954.

[fol. 709] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants in Error.

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants in Error.

No. 35,734

PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants in Error.

MAJORITY OPINION—April 27, 1954

[fol. 710] Syllabus

1. Under the regulatory power of the Corporation Commission for conservation purposes it can fix a minimum

price which must be obtained for natural gas as a condition precedent to the taking of natural gas or any component part thereof from the structures. Such an order, even though most of the gas so taken from the structures will eventually be sold outside this state, does not place a embargo or unlawful restriction upon interstate commerce, unlawfully impair the obligation of contracts or violate due process. The regulation is imposed before any movement in interstate commerce occurs.

2. Having fixed a minimum price as a condition precedent to the taking of natural gas from the structures, in furtherance of the power to regulate such taking for conservation purposes the Commission may require a producer who does not sell raw gas at the wellhead or one who processes such raw gas for the purpose of breaking it into component parts before delivery to obtain therefor a price equivalent to the fixed minimum price of raw gas at the wellhead. This is necessary in order to prevent discrimination and ensure that all producers will be regulated alike. In doing this it may prescribe a formula or method by which such producer may obtain such equivalent price, it is only necessary that such formula or method so established be reasonable and practically effective to carry out the purpose for which it is made.

[fol. 711] 3. Record examined and held; That the order of the Corporation Commission is based upon basic findings of fact and is supported by substantial evidence. Certain mineral owners made application to have a minimum price fixed for gas produced in the Guymon-Hugoton natural gas field. Certain producers in said field protested such price fixing. From order of the Commission fixing the price of raw gas at the wellhead, the price of raw gas sold off the lease, and the price of residue gas after processing operations three producers, Panhandle Eastern Pipeline Company, Michigan-Wisconsin Pipeline Company, and Natural Gas Pipeline Company of America appeal. The three appeals are here consolidated.

Affirmed

C. C. McDugald, W. T. Spies, D. H. Culton, Coleman Hayes, Attorneys for Natural Gas Pipeline

Co. of America, Jack T. Conn, D. H. Culton, Cole-
[fol. 712] man Hayes, Arthur R. Seder, Jr., Attorneys for Michigan-Wisconsin Pipe Line Co., Ross Rizley, L. E. Tyron, Orlando F. Sweet, Edward H. Lange, Mark H. Adams, William I. Robinson, Attorneys for Panhandle Eastern Pipe Line Co. For Plaintiffs in Error.

Cecil C. Hamilton, Oklahoma City, Okla., Rayburn L. Foster, Harry D. Turner, R. M. Williams, Kenneth Heady, Bartlesville, Oklahoma, Phillips Petroleum Co., Floyd Green, Ferrill Rogers, Attorneys for Corporation Commission, T. Murray Robinson, Leon Shipp, Oklahoma City, Oklahoma, Vincent Dale, Guymon, Oklahoma, Attorneys for Members of Texas County Land and Royalty Association. For Defendants in Error.

[fol. 713] ARNOLD, J:

Certain mineral owners in Texas County, Oklahoma, filed an application before the Corporation Commission for an order determining the minimum price at which gas produced from the Guymon-Hugoton field may be first purchased or sold. Certain producers and purchasers of gas from said field filed their protests and responses. From the Commission's order fixing minimum price at which such gas may be sold Natural Gas Pipeline Company, Michigan-Wisconsin Pipe Line Company and Panhandle Eastern Pipeline Company have filed their separate appeals, here consolidated.

On behalf of the applicant mineral owners the evidence reasonably tends to show that the Corporation Commission by its order No. 19514 issued effective February 1, 1947, fixed the minimum price at which gas may be produced and taken from the structure in this field at 7¢ per thousand cubic feet; that since that date the price of all other industrial fuels has substantially increased; that comparing the other industrial fuels in most common use, such as coal, residual, crude oil, kerosene, and gasoline with gas on an [fol. 714] energy content basis the fuel source cost of natural gas is about one third that of coal (the lowest in

price per energy content unit of all the other industrial fuels) and the other fuels increase in cost per energy content unit to the highest, gasoline, which is almost fourteen times greater; that natural gas since 1938 has been lower in price in comparison to the heat energy content than any other fuel because gas has not been on a competitive market while the other fuels are and have been; that in 1950 natural gas supplied 20.94% of the total of mineral energy supplied, produced, and used as fuel in the United States and received only 5.16% of the total dollar income for all energies at their source; that in order to have the same price differential between gas and other fuels as existed in 1947 when the former order of the Commission was entered the price of natural gas would have to be set at 12.64% per thousand cubic feet that to compare favorable with other industrial fuels the price should be 25 or 30 cents per 1000 m. c. f.; that increasing the price of gas as taken from the structure would tend to conserve gas and prevent physical waste in that the higher price would allow wells in fringe areas of the field to be drilled and [fol. 715] operate at a profit whereas if a price increase is not given such wells cannot economically and will not be drilled resulting in non-development of the field, loss to the owners in such fringe areas and damage to their rights in the common source of supply; that better and more expensive methods of production would be economically feasible which would tend to conserve gas and eliminate the necessity of blowing out the wells to clean them; that the entire Hugoton field is a single reservoir extending from the Texas panhandle across Texas County and into Kansas; that if the fringe wells are not drilled the gas will migrate to existing wells, causing loss to the fringe owners; that the higher price is necessary while marketing facilities are available and if fringe wells were not drilled until the rest of the field was abandoned very little gas would be left in the reservoir and there would be no marketing facilities available therefor; that about 99% of the gas produced in the Guymon-Hugoton field is transported out of the state of Oklahoma; that the land owner who owns a quarter section of land gets approximately $1 per day on the average well royalty; that the field as a

whole is producing more gas than it did five years ago [fol. 716] but the individual wells are producing less; that gas of the same quality is sold by different producers in this field at prices varying from the 7¢ minimum now in effect to 9.95781¢; that none of the mineral owners were consulted as to the price they would receive for their gas and that they are dissatisfied with the prices they are receiving and want a uniform price throughout the field; that since 1946 there has been a tremendous increase in the demand for natural gas as a fuel and the costs of production have likewise materially increased; that since the 7¢ minimum was fixed several contracts for gas have been negotiated at a price of 9.8¢ per thousand cubic feet; that to protect the interest of the state of Oklahoma a price for gas in Oklahoma should be fixed which would produce the maximum revenue consistent with the policy of maintaining the markets; that a price of 9.8262¢ would not affect the market, would allow thin acreage to be developed and produced preventing migration and allowing full development of the field, thus protecting the correlative rights of the owners.

[fol. 717] Over the objection of other producer respondents in the hearing Phillips Petroleum Company was allowed to introduce evidence which reasonably tends to show that in the Guymon-Hugoton field it is primarily a producer of gas from its own wells and leases; that it does not sell its gas at the wellhead but, under commitment of long term contracts with Michigan-Wisconsin Pipeline Company and Panhandle Eastern Pipeline Company it gathers the gas which it produces in its own gathering lines, moves the gas to its two processing plants, one in Hansford County and the other in Sherman County, Texas, about a mile and a quarter south of the Oklahoma line, and there removes liquid hydrocarbons and delivers the dry or residue gas to said companies; that in addition to the gas which it produces Phillips has contracts with certain other producers by which it purchases gas at their wellheads which gas it gathers processes and sells in the same manner as the gas from its own wells and leases; that the production from its own leases is 14% of the total production of the field and the gas it purchases is 4.4% of the field total,

making a total of gas which it produces or purchases of 18.4% of the field total; that the geographical location of the processing plants across the state line is a mere incident, they being so located because the site is more cen- [fol. 718] trally located in respect to Phillips' gathering operations in both Texas and Oklahoma; that the value of the liquid hydrocarbons extracted from the raw gas by Phillips in these plants varies with market conditions as does the cost of gathering the gas; that in the process of gathering and extraction some of the gas is used for fuel purposes and some is lost through shrinkage; that after allowing depreciation to date Phillips has invested in the Hansford and Sherman plants and the gathering systems serving them in excess of 19 million dollars; that all of the gas produced and purchased by Phillips in this field is sold after the extraction of liquid hydrocarbons as residue gas elsewhere than at the wellhead; that the acreage from which it produces and purchases gas is dedicated for the life of the production to the performance of its contracts with Panhandle and Michigan-Wisconsin; that after processing at these plants at Hansford and Sherman the residue gas is delivered into the interstate pipelines of these two companies; that the contracts with both Panhandle and Michigan-Wisconsin provide in great detail as to how the gas shall be processed and the constituents and heat energy content of the residue gas delivered to them; that besides [fol. 719] Phillips only Panoma and Plains Natural Gas Company produce, gather, and process their own gas in this field and sell it in interstate commerce; that Phillips is the only company in the field that both buys gas at the wellhead for processing in addition to processing its own gas; that the gathering and processing of the gas produced in Oklahoma is part of one continuous overall production; that the value of the products extracted from the gas in Oklahoma from this field, although a fluctuating figure, about equals the cost of gathering and the cost of processing; that in order for Phillips to obtain the equivalent of 9.8262 cents per thousand cubic feet at the wellhead for the gas which it produces it must receive 9.8262 for the residue gas after processing; that if Phillips does not obtain such price for residue gas but is forced to sell it at

the price called for by its contracts with Panhandle and Michigan-Wisconsin such a loss would result that Phillips would be forced to close down its producing, gathering, and processing operations; that there is no other market for its gas; that if Phillips were forced to construct another processing plant inside the borders of Oklahoma the unit cost would be much higher than it is under the present arrangement whereby the same plants can process both [fol. 720] Oklahoma and Texas gas; that the total cost of gathering and processing when deducted from the value received for the liquid hydrocarbons extracted leaves only a minute fraction of a cent for earning rate on the investment; that out of 1000 wells currently producing in this field gas is sold at the wellhead from only 141 of them and the remaining gas produced in this field by all companies is sold at points elsewhere than at the wellhead.

Cities Service Gas Company, Northern Natural Gas Company, and Natural Gas Company introduced stipulations outlining their respective operations and showing that they purchased both raw gas at the wellhead and processed gas and sold most of such gas in interstate commerce. The various contracts and amendments or modifications thereof between Phillips, Panhandle Eastern, and Michigan-Wisconsin were introduced in evidence.

The Commission entered its findings to the effect that since the date of its last order in 1947 fixing the minimum price of gas at the wellhead 7 cents commodity prices in [fol. 721] general and the use value of gas had so increased that the sale of gas from said field at any price less than 9.8262 cents measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch causes both physical and economic waste; that the taking of gas at the price now prevalent causes a less return to royalty owners and the State of Oklahoma, results in inequitable taking from the common source of supply and in discrimination against various producers in the field; that only a small portion of the gas produced in the field is actually sold at the wellhead; that much of the gas is gathered and liquid hydrocarbons extracted, the residue being sold at the conclusion of processing; that the value received by the processor for liquid hydrocarbons extracted does not exceed

the cost of gathering and processing the gas and represents a valuable service to the purchaser; that to realize a price equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead such producer and processor must receive for such residue gas a price of not less than 9.8262 cents; that to prevent waste, to protect correlative rights, and insure the greatest ultimate recovery of gas from the common reservoir gas should not be permitted [fol. 722] to be taken from the structures of said field at a price less than 9.8262 cents; that a minimum price order cannot be made fully effective unless the manner in which producers of processed gas shall obtain such price is provided; and entered its order that no gas shall be produced from said field at a price less than 9.8262 cents per thousand cubic feet if sold at the wellhead or on the lease or drilling unit or a price equivalent to 9.8262 cents if sold off the lease or drilling unit or otherwise utilized; that the minimum price of gas sold at the conclusion of gathering but without extraction of hydrocarbons shall be 9.8262 cents plus the reasonable cost of gathering; and that processed or residue gas shall be sold at a price of not less than 9.8262 cents.

The contentions of various plaintiffs in error may be broadly grouped under three general propositions, each with several subheads and arguments which will be discussed in their proper place. These three propositions are: (1) that the order of the Commission is not predicated upon adequate findings and is not supported by the evidence; (2) that the order purports to regulate interstate commerce and imposes an unlawful embargo and restriction thereon; (3) the Commission has no power or author- [fol. 723] ity, express or implied, to fix the minimum price at which residue gas, only one of the constituents of raw gas, shall be sold.

Under the first general proposition plaintiffs in error allege that the findings of the Commission are inadequate as basic findings of fact to support the conclusions expressed in order as findings in that the Commission's finding as to the existence of physical waste is a final conclusion, not a basic fact finding; that the finding of physical waste is a final conclusion, not a basic fact finding; that the find-

ing of economic waste is not supported by the evidence; that the Commission cannot fix the price of commodity sold in interstate commerce merely to increase the profits of the sellers of such commodity; that the findings that under existing price there is loss to the royalty owners and the State do not justify the order; the order goes beyond the necessities of the case; the finding that the price now prevalent results in inequitable taking from the common source of supply is without support of adequate findings and evidence; the finding that the prevalent price results in discrimination against various producers is unsupported by findings of basic facts and the evidence; the finding [fol. 724] that the production of gas is in excess of market demand is without foundation in findings of basic facts or the evidence; a mere finding that the order is for the prevention of waste, the protection of correlative rights, and in the interest of the state is not sufficient basis for the exercise of jurisdiction; the order purports to fix the earnings of gatherers and processors of gas which is beyond the scope of the Commission's jurisdiction; the order is a special order; there is no substantial evidence to sustain the finding that the minimum price for residue gas should be identical with the wellhead price for raw natural gas.

A review of the evidence outlined above demonstrates that none of these contentions are well founded. There is substantial evidence to the effect that the prevalent price of raw gas in this field (seven cents per thousand cubic feet as fixed by previous order) will not, under present economic conditions prevailing, such as cost of labor and materials, permit the drilling of wells in fringe areas, resulting in non-development of the field, migration of gas to wells in production to the loss of landowners in fringe areas, and incomplete exhaustion of the gas-bearing structures, all to the loss of landowners, producers, and the [fol. 725] State of Oklahoma generally. Such facts constitute both physical and economic waste and amply justify the Commission's order on that factor. Certainly such facts clearly show inequitable taking from the common source of supply, irreparable harm to correlative rights of owners, loss to royalty owners, and loss to the State and are sufficient to sustain the interest of the state in correct-

ing such abuses. This is a regulatory order based upon the interest of the State in conserving its natural resources; it is not an order designed merely to increase the earning of producers and processors. Such an order is a proper exercise of the State's police power. Cities Service Gas Co. v. Peerless Oil & Gas Co., 263 Okla. 35, 220 P. 2d 279, affirmed 340 U. S. 179, 71 S. Ct. 215, 95 L. ed. 190. That it may have such effect is a mere incident.

The evidence that the value of the liquid hydrocarbons extracted just about balances the cost of gathering and processing the raw gas is uncontradicted. Certainly such processing constitutes a valuable service to the purchaser. The contracts introduced in evidence are very precise as to exactly what constituents shall remain in the residue gas contracted for. To have any regulation at all, to insure [fol. 726] that all gas produced from the structures in this field shall be sold at the same minimum price it was necessary to fix the price of residue gas and the evidence is substantial to show that such price must be the same as that of raw gas to attain this end. See Phillips Petroleum Co. v. Oklahoma, 340 U. S. 190, 71 S. Ct. 221, 95 L. ed. 204.

The findings of the Commission are supported by basic facts and the order of the Commission is based on substantial evidence.

Under the second and third broad groups of contentions plaintiffs in error claim that the order fixing the price of residue gas places a burden upon interstate commerce; that such residue gas is dedicated and destained for interstate movement even before the production of the natural gas of which such residue gas is a constitutent; that there is a steady, uninterrupted flow from the wells to the gathering system through the processing plant into the pipeline systems and ending at markets in states outside Oklahoma; that such order was not made in any economic interest but for the interest of those producers who also process gas before delivery, and thus imposes an embargo and unlawful regulation on interstate commerce, is arbitrary and [fol. 727] discriminatory; the order constitutes an unwarranted and unnecessary invasion of property rights under the guise of the exercise of the police power and deprives plaintiffs in error of their property without due process of

law; the order impairs the obligation of contracts, takes plaintiffs in error's property for private use; there is no local interest which outweighs the national interest in burdening gas sold interstate with state price-fixing regulations; the Commission seeks by this order to exercise extraterritorial jurisdiction; the price fixed for residue gas is not supported by substantial evidence.

The order of the Commission fixing a price of 7 cents per thousand cubic feet at the wellhead in the Guymon-Hugoton field was involved in the cases of Cities Service Gas Co. v. Peerless Oil & Gas Co., supra, Phillips Petroleum Co. v. Oklahoma, supra, and Natural Gas Pipeline Co. of America v. Panoma Corporation, et al., not yet officially reported, 24 Oklahoma Bar Journal 1393, —— P. 2d ——. The same field and the same parties as here were involved and the same arguments were made and the same authorities cited in support thereof as here. These cases are decisive of the point that the Commission under its regulatory power for conservation purposes has the power to fix a minimum price [fol. 728] as a condition precedent to the taking of natural gas from the structures; that such minimum price does not place an embargo or unlawful restriction upon interstate commerce, unlawfully impair the obligations of contracts, or violate due process. And as said in the Phillips Petroleum Company case, supra, by the United States Supreme Court, the Commission may order a producer such as Phillips who does not sell raw gas at the welihead to obtain the equivalent of the fixed minimum price when the gas is sold after processing, because the Commission must be able to regulate the operations of all producers or there is little point in regulating any.

The only new question presented here is: may the Commission establish a method or formula by which it can be ascertained whether a producer who does not sell raw gas at the wellhead obtains the equivalent of the fixed minimum price of raw gas as taken from the structures? and if so and to implement the obtaining of such equivalent price can the Commission add to the cost of raw gas which is not processed before sale but is sold off the lease the reasonable cost of gathering, or in case the raw gas is processed for the removal of liquid hydrocarbons before actual

delivery to the purchaser, fix the price of the residue gas being only one constitutent of the raw gas, so delivered? [fol. 729] Applicants concede that under their contracts the residue gas which they purchase is dedicated to the fulfillment of such contracts even before the production of the natural gas of which such residue gas is a constitutent is produced and that such gas can be sold to no one else. This, of course, amounts to a sale of the residue gas in place; the sale is made before any movement of any kind starts and before anything in the nature of interstate commerce occurs, regardless of the acts required to be performed before the residue gas is separated from other constituents of the raw gas and regardless of the point of delivery to the purchaser. As said in Natural Gas Co. v. Panoma, supra, the processing of the raw gas amounts to a manufacturing operation and represents a valuable service to the purchaser. Under their contracts purchasers are able to buy a manufactured product for which they have a ready sale without necessitating large investment in processing equipment to make the raw product salable.

It seems self-evident and axiomatic that if the Commission has the power to regulate by fixing minimum prices it has the power to establish a formula and method by [fol. 730] which it may be ascertained and determined whether all producers in the field are obtaining such minimum price, as it is their inescapable duty to do. It is only necessary that a formula or method so established be reasonable and practically effective to carry out the purpose for which it is made. Under the evidence here it is clearly shown that the market for liquid hydrocarbons is a competitive and fluctuating one. It would seem highly impractical to attempt to fix a price for any one or all of such liquid hydrocarbons. It is also shown that by the very nature of natural gas its market is fixed and stable and amounts almost to a monopoly in a limited way; that because of the great expense and investment necessary for adequate distributing lines for moving the gas to the ultimate user a seller of residue gas must have a dedicated and guaranteed source of supply and franchise for more or less exclusive sale. Such requirements, of course, keep the sale

of residue natural gas as a fuel off a competitive market to a great extent.

The evidence shows that the average return over a long period from the sale of the liquid hydrocarbons extracted from the raw gas just about balances the cost of gathering [fol. 731] and processing; sometimes the sale amounts to more and quite often amounts to less. As a practical matter it seems that the only feasible method to carry out the purpose of the Commission in regulating the taking of natural gas from the structures by all producers, regardless of their particular mode of operation, would be to fix the price of the residue gas, which is the only fairly stable constitutent of raw gas.

All parties concede that under the cases above the Commission can fix the price of gas as taken from the structure. If it can fix the price of the whole it can fix the price of all the parts constituting the whole. If it is not practically feasible to fix the price of all the parts constituting the whole it can fix the price of that constitutent which can be controlled, provided it does it in a reasonable manner and so that the overall purpose is carried out. Under the evidence it seems that the Commission established the only formula which it could establish that would be workable and not be discriminatory or arbitrary. Under the formula established the producer who sells raw gas without processing off the lease obtains the minimum price at [fol. 732] the wellhead. The same thing is true as to residue gas. As it is shown that the liquid hydrocarbons counterbalance the cost of gathering and processing (which as above stated represents a valuable service to the purchaser) the only practical way to ensure that a producer who processes raw gas before actual delivery thereof to the purchaser will obtain the equivalent price of raw gas at the wellhead is to fix the price of residue gas as the same price of raw gas. As a practical matter this allows the purchaser of residue gas to receive a manufactured and processed product for which he has a sale at the same price, he would have to pay for the raw product. If, for example, a furniture dealer could obtain finished furniture for sale at the same price he could obtain unfinished lumber he

would think he had a rare bargain. The point of delivery of the finished product is a mere incident. The sale is made before anything in the nature of interstate commerce occurs. The order thus has no extraterritorial effect.

We think the Commission has the power to fix the price of residue gas as a necessary incident, under the facts shown in this record, to the regulation of the sale of raw gas as taken from the structures, and the formula and method established is both reasonable and practical. [fol. 733] The order of the Commission is based upon basic findings of fact and is supported by substantial evidence.

Affirmed.

Johnson, V. C. J., and Welch, Corn, and Arnold, JJ: concur. Williams, J., concurs by reason of stare decisis. Halley, C. J., and Davison, O'Neal, and Blackbird, JJ: Dissent.

[fol. 734] [File endorsement omitted]

Order correcting opinion

See Order Attached

Nos. 35,731, 35,732 and 35,734

(Considered as Consolidated)

Natural Gas Pipeline Company of America vs. the Corporation Commission of the State of Oklahoma, and Certain Mineral Owners in Texas County, Oklahoma, and Phillips Petroleum Company.

Dissenting Opinion—April 27, 1954

Blackbird, J: Dissenting:

I cannot agree with the views expressed in the majority opinion.

The price-fixing part of the Order involved herein is as follows:

> "It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:
>
> 1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma ex-

cept at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, *or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or* [fol. 735] *at the conclusion of gathering the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.*"

It will be seen from the above that the Order purports to fix the price of gas at three different stages, namely:

1. Raw gas at the well head;

(2) Raw gas "sold off the lease or drilling unit on otherwise utilized" including that sold at the conclusion of gathering and before processing, and

(3) Residue gas (the residue of raw gas *after* it has been processed).

As to (1) above, there can be no question as to the validity and constitutionality of the Order in view of the decision of this Court in Cities Service Gas Co. v. Peerless Oil & Gas Co., 203 Okla. 35, 220 P. 2d 279, and the decision of the United States Supreme Court on that case's appeal. See Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179, 71 S. Ct. 215, 95 L. Ed. 190. However, as to (2) and (3) I think the Order is invalid and unconstitutional. [fol. 736] Each of the respondent companies is a "Natural Gas Company" as that term is defined in the Natural Gas Act, 52 Statutes 821, 15 U. S. C. A. Secs. 717, et seq. All are foreign corporations operating gas pipe line transportation systems traversing state lines and transporting residue gas derived by processing raw gas. Substantially all of this residue gas is transported through Respondents' interstate pipe lines and sold as fuel in various northern states. Such gas transportation is performed under au-

thority of certificates of public convenience and necessity issued to said Respondents by the Federal Power Commission and the selling of that gas in those states is likewise under the exclusive jurisdiction of that body. When the raw gasoline arrives at Phillips' two Texas plants for processing, it has already been commingled in Phillips' Texas-Oklahoma pipe line system with other raw gas produced in Texas. Michigan-Wisconsin's purchases from Phillips are made under a contract specifying a certain price therefor, entered into by and between said parties on December 11, 1945, with amendments later made.

[fol. 737] The Panhandle Company's pipe line system extends directly from producing areas in Oklahoma, Texas and Kansas to Missouri and other states north and east, where the gas it transports is sold at wholesale, both to utility companies for resale and to industries in those states for their own use. Part of this gas is derived from Panhandle's own wells in Oklahoma, and part is purchased from other producers.

All of the respondents maintain that Order No. 26096 is an unconstitutional assertion of power by the Corporation Commission in so far as it purports to fix the price of residue gas, and raw gas, after it has left the wellhead and lease or drilling unit where it is produced and enters an interstate pipe line system for resale in other states. Only Natural argues that the Order as a whole, including the part applicable to wellhead gas, is invalid or not justified by the evidence. As I consider the Order separable as applied to the gas in its three classifications above named, and, as I note that under the stipulated facts, Natural is not a purchaser of wellhead or raw gas, if Order No. 26096 has been reversed only as it purports to apply to gas other [fol. 738] than at the wellhead, Natural would then have no rights impinged, as the price it is paying Panoma for residue gas under its present contract presumably would not be directly affected or disturbed. In that situation, the questions Natural raises as to the wellhead gas price fixing feature of the Order would become merely abstract or hypothetical ones, and not subject to review on specifications of error by this party not shown to be then affected by it. See Patterson v. Stanolind Oil & Gas Co., 182 Okla.

155, 77 P. 2d 83; Emrick v. State Highway Commission, 147 Okla. 252, 296 P. 412; Swan v. Home Savings & State Bank, 148 Okla. 42, 297 P. 250; In re Stewart Bros., 53 Okla. 153, 155 P. 1124; 2 Am. Jur., "Appeal and Error", Sec. 152. I will therefore reserve opinion on that part of Natural's argument and consider now only its argument directed at the "non-wellhead" portions of the Order, together with those of the other protestants, which on those phases are substantially the same.

As the Order purports to fix the price of raw gas at the conclusion of its gathering beyond Oklahoma's territorial limits, or after it has gotten into an interstate pipe line, and purport to fix the price of residue gas, respondents say:

> [fol. 739] (1) The findings and Order of the Commission are not supported by substantial, competent evidence;
>
> (2) The Order is beyond the constitutional and statutory power of the Commission and, as applied to protestants, violates,
>
> (a) Sections 7, 15, 23, and 24 of Article II of the Oklahoma Constitution, and Section 10, Article I, and the Fourteenth Amendment of the U. S. Constitution by taking their property and valuable property rights without due process of law, without just compensation, and without a justifying public purpose or reciprocity of advantage, and denies them equal protection of the law.
>
> (b) and violates section 8, Article I of the U. S. Constitution by placing an unlawful embargo on interstate commerce."

In so far as Order No. 26096 purports to apply to the gas after it is received into interstate pipe lines and is sold for immediate transportation and resale in other states, I think its invalidity is settled by State of Wisconsin v. Federal Power Commission (U. S. Ct. App. D. C.) 205 Fed. 2d 706. The opinion promulgated therein demonstrates, with the ample support of the previous U. S. Supreme Court decisions cited therein, that gas sales, in no respect (affecting their interstate character) different from those in the present case, are interstate commerce, and

cannot be regulated by any state; and that the exemption of "production or gathering of gas" contained in the Nat- [fol. 740] ural Gas Act, supra, does not extend to sales made after production and gathering have been completed. There is no direct conflict between this decision and previous decisions of our own Court. There is little if any, disagreement among the litigants herein as to the principles of constitutional law that apply. The only conflict or joinder of issues in their argument seems to center around their divergent interpretations of Order No. 26096. Thus they agree that under the weight of authority, including Cities Service Oil & Gas Co. v. Peerless Oil and Gas Co., supra, extension of the state's police power to price-fixing can be constitutionally justified only on the basis of a public purpose or protection of the public interest, such as gas conservation. But proponents of the Order seek to interpret and justify it as a conservation measure. Therefore, let us analyze the present order as tested by the principles laid down by our Court in the Cities Service Case. The material ones, as expressed in the syllabus of our opinion, are as follows:

> [fol. 741] "1. The grant of power to the Corporation Commission under 52 O. S. 1941, § 239 to regulate the *taking of natural gas from a common source of supply* 'so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom,' by necessary implication includes the power to employ such means as may be *reasonably necessary* to the accomplishment of the declared purposes and includes the power to fix a price consideration in the *taking* of gas when found necessary to the attainment of such ends.
>
> 2. The provisions of 52 O. S. 1941, § 233, give the Corporation Commission authority to fix the price at which natural gas may be *produced and taken from the field*, under the circumstances and in the manner therein stated.
>
> 3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an *unnecessary*

and unwarranted interference with individual liberty. A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.

* * * * * * *

5. The Commerce clause of the Federal Constitution does not preclude the state in the protection of local interests from fixing a uniform minimum price consideration *as a condition of the taking* of natural gas from a common reservoir because a producer therefrom will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed *before* the operation of interstate commerce occurs." (Emphasis added.)

[fol. 742] As shown in the above quotation, our upholding of the gas price-fixing Order involved in that case, was based, at least in part, upon the following considerations:

(1) That the Order was a *reasonably necessary* means to the accomplishment of the declared purpose of the Corporation Commission's statutory grant of power to prevent waste and protect correlative rights in a common source of gas supply;

(2) That price control is unconstitutional only when it is an *unnecessary and unwarranted* interference with individual liberty;

(3) That such an order does not violate the Commerce Clause of the Federal Constitution when it fixes a uniform minimum price as a condition of *taking the gas from a common reservoir* and takes effect *before* the gas gets into interstate commerce.

When weighed in the light of the above tests, we think the order in question must be found wanting. After examining the provisions of the Order purporting to fix the price of residue and raw gas away from the well or field or at the conclusion of its gathering, and weighing their effect and operation, as applied to the situation here and the rights of all concerned, we do not see how they can be justified as a

conservation measure. In the 14th paragraph of its findings, the Commission found:

> [fol 743] "That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants."

This is obviously an incomplete sentence and finding, but if it was intended to say by it that fixing a price for residue gas and raw gas away from the wells or field is reasonably necessary to the effective and indiscriminate operation of the order, we do not agree. It was not shown that any of the wells in the Guymon-Hugoton Field are without gauges at their wellheads or that it is necessary to fix the price at any other point in order to accomplish the only legally justifiable purposes of such an order. There is no substantial evidence in this case to detract from the conclusion that the purposes of conservation are served when the taking from the gas sand is regulated at the wellhead by fixing the price right there—and before it gets into interstate pipe lines and is commingled with gas from other states, as was shown to occur before some of it arrives at Phillips' plants in Texas. Of course, Phillips' evidence was calculated to show that it and other gatherers and processors similarly situated had a problem of determining [fol. 744] whether or not they were receiving for residue gas the equivalent of the Commission-fixed price for raw gas at the wellhead. This same problem is said to have been presented to the United States Supreme Court in Phillips Petroleum Co. v. Oklahoma, 340 U. S. 190, 71 S. Ct. 221, 95 L. Ed. 204, as evidenced by the following excerpt from the Court's opinion:

> "Phillips also relies heavily on the contention that the orders are unreasonably vague. In substance, this argument is nothing more than that the determination by an integrated company of proceeds realized from gas at the wellhead involves complicated problems in cost accounting. These problems are common to a host of valid regulations. There is nothing to indi-

cate that Phillips will be penalized for reasonable and good faith efforts to solve them."

In both of the above cases the Cities Service Co. Case, supra, it was demonstrated that an order fixing a wellhead price applies to all and discriminates against none. While this may not be the only way to prevent waste and preserve correlative rights by price-fixing, it appears to be the best plan that has come before this court. Contrary to the impression the majority opinion seems to leave, the Case, [fol. 745] supra, furnishes it no support. While it is true that the Court therein recognized that the Commission must be able to fix the price for all *producers* or there is no point in trying to fix the price for any, it rejected Phillips' claim that a wellhead price could not be uniformly and indiscriminately enforced. And it must be borne in mind that the Orders there involved attempted no more than to fix the price of raw gas at the wellhead, as distinguished from a residue or by-product processed *in another state and there* sold in interstate commerce. It was specifically stated in that opinion: "Appellant does not argue that the orders violate the Commerce Clause, art. 1, § 8, cl. 3."

The price fixed in the objectionable portions of the order here presented would not operate indiscriminately. True, the order might readily solve Phillips' accounting problems. If completely effective, it might even furnish Phillips legal justification and exoneration for not living up to its contracts for the sale of residue gas made in prior years and specifying prices which now may seem unfavorable to it, yet it would discriminate against those who do not have the pipe line annd processing facilities Phillips *possesses*. [fol. 746] Granted that resdue gas, or raw gas with gasoline and hydrocarbons removed, is more valuable for fuel purposes and to fuel consumers and distributors than the gas as it comes from the well in its natural state and that such gas should command a better price from such purchasers (being processed and ready for their use) these facts are immaterial, or at least of minor or secondary importance, to the primary question; it is necessary for the Commission to guarantee to a processor its cost of gather-

ing, or in the instance of residue gas, that cost, plus the cost of processing, in order to accomplish conservation of the State's natural gas resources? If so, this was not established by the evidence despite the statement to the contrary contained in the majority opinion. No attempt was made to show that gas from the Guymon-Hugoton Field would not have a market or that economic or physical waste of such resources would result if gatherers of gas in the field were not thus guaranteed their cost of gathering over and above the wellhead price. In this connection, I challenge any and all to show me proof in the present record that Phillips is actually losing money on its operations, or (as said in the majority opinion) "that if Phillips does not obtain" the price fixed by the order in question [fol. 747] "for residue gas but is forced to sell it at the price called for by its contracts with Panhandle and Michigan-Wisconsin such a loss would result that Phillips would be forced to close down its producing, gathering and processing operations; . . .". As hereinbefore noted, Phillips attempted to show by its interdepartmental system of cost accounting, and the Commission found, that the "value" of the liquid hydrocarbons extracted from the raw gas does not exceed the cost of processing and gathering it, "including a reasonable allowance for depreciation and return on investment. . . .". But I say that even if, on the basis of applicable law and substantial evidence, such a guaranteed profit to such processors might conceivably be justified as a conservation measure, it is discriminatory, and the discrimination is in favor of those situated as is Phillips. By guaranteeing such companies the same minimum price for residue gas as raw or wellhead gas, the order gives them either; *one* highly marketable product (residue gas) free of cost for gathering and processing (if such cost is charged to its processing or refining department), or *more* marketable products free of such costs, such as gasoline, carbon black and other hydrocarbons (if the gathering and processing is charged against the residue gas as a part of the cost of marketing it). Other [fol. 748] purchasers buying gas at the wellhead would not have the advantage of this "two-way guarantee," but

after purchasing the gas there, are "on their own" as regards paying their costs of gathering and marketing it. Another and second discrimination which is more patent on the face of the Order is that it purports to require the producer or lessee who sells gas after it is "gathered", but before it is processed, to obtain for it, in addition to the wellhead (and residue price) of 9.8262 cents per thousand, an extra added premium which the Order calls: "the reasonable cost of gathering." Aside from the controversies such an order will engender over the question of when or at what point gas can be said to be "gathered" within the meaning of that term as used in the order, this provision discriminates in favor of those owners of mineral rights who derive their producing royalty income from lessees or producers who sell gas at the conclusion of gathering, and against those who derive their income from producers in the other two catagories, that is, (1) Those who sell nothing but raw gas at the wellhead, and (2) those who make no sale of gas until after it is processed and becomes residue gas. The majority opinion reflects that there is some wastage and shrinkage between the wellhead and the gauges at the processing plants. How will the *the* [fol. 749] royalty owners under lesses owned by Phillips get paid for as many cubic feet of gas as the royalty owner under leases producing gas that is sold at the wellhead? Will these royalty owners get paid on the basis of the number of cubic feet of raw gas that pass through the gauges at the wellhead, or will they be paid on the basis of the number of feet of residue gas that pass through the gauges at the processing plant? To me, the above considerations not only demonstrate that the order in question is discriminatory in more than one respect, but also, that by it, the Commission is about to launch an unlawful and dangerous invasion of the field of private enterprise, or "individual liberty" (as expressed in the Cities Service Case, supra) without the justification of necessity for conservation purposes. If this body's fixing of the price of residue gas can be justified on the grounds of conservation, as different a product and as far removed as it is from the natural gas that is the resource to be conserved, then I see

no reason why that Body cannot also fix the price of gasoline, carbon black, and other products or commodities refined and/or manufactured from natural gas.

[fols. 750-753] The record reveals that before the last of the protracted series of hearings in this case the Commission, through its Chairman and its attorney, expressed grave doubt, or at least serious misgivings, as to whether a price-fixing order for anything but raw gas at the wellhead could be legally or constitutionally justified as a conservation measure. This makes it doubly surprising and somewhat imponderable to find that after delaying its decision several days after the last hearing, the Commission, on the basis of the weak and biased evidence presented by no other company than Phillips, signed substantially the same kind and form of order that Phillips' attorneys had previously drawn and exhibited to the Commission earlier in the hearings.

On the basis of the foregoing views, it is my conclusion that Order No. 26096 is valid in so far as it sets a price for natural gas at the wellhead, but is invalid in its other price-fixing aspects. Accordingly, I think the Order should have been affirmed in part and reversed in part. To that extent, and for the foregoing reasons, I dissent to the opinion of the majority.

* * * * * * *

[fol. 754] In the Supreme Court of the State of Oklahoma

No. 35,731

Natural Gas Pipeline Company of America, Plaintiff in Error,

v.

The Corporation Commission of the State of Oklahoma, et al., Defendants in Error.

No. 35,732

Michigan-Wisconsin Pipe Line Company, Plaintiff in Error,

v.

The Corporation Commission of the State of Oklahoma, et al., Defendants in Error.

No. 35,734

Panhandle Eastern Pipe Line Company, Plaintiff in Error,

v.

The Corporation Commission of the State of Oklahoma, et al., Defendants in Error.

Petition for Rehearing—Filed May 11, 1954

[fol. 755] Natural Gas Pipeline Company of America, plaintiff in error in Cause No. 35,731 (hereinafter called Natural), Michigan-Wisconsin Pipe Line Company, plaintiff in error in cause No. 35,732 (hereinafter called Michigan-Wisconsin) and Panhandle Eastern and Panhandle Eastern Pipe Line Company, plaintiff in error in Cause No. 35734 (hereinafter called Panhandle), show to the court that on April 27, 1954, there was filed in said causes an opinion and judgment affirming an order of the Corporation Commission of the State of Oklahoma. By such opinion and judgment, this Court has held that Natural must pay Panoma Corporation (herein referred to as Panoma) and that Michigan-Wisconsin and Panhandle, respectively, must pay Phillips Petroleum Company, (herein referred to as Phillips) the price set forth in the Com-

mission order (rather than the price set forth in the gas purchase contracts between Panoma and Natural, between Phillips and Michigan-Wisconsin and between Phillips and Panhandle, respectively) for purchased residue gas.

[fol. 756] Basic in the court's opinion is the Court's interpretation of the contract between Panoma and Natural, the contract between Phillips and Michigan-Wisconsin, and the contract between Phillips and Panhandle. The Court has interpreted each of such contracts as reflecting, by force of the dedication provisions therein, a sale of the residue gas constituent of the raw natural gas "in place",—while still in the bowels of the earth.

The interpretation is in conflict with the interpretation which has been given each of those contracts by other courts and commissions. It is in conflict with former interpretations given to the contract between Phillips and Panhandle and to the contract between Panoma and Natural by this court. The interpretation which the Court now gives to these contracts is not the interpretation given them by the Corporation Commission. Furthermore, it is contrary to the express stipulations in the record. Plaintiffs in error have not, therefore had an opportunity to discuss such interpretation in any of their briefs filed herein.

[fol. 757] If the interpretation placed upon the contracts by the Court be assumed to be correct, such interpretation completely removes plaintiffs in error as owners of the residue gas from the operation of the order. If, however, that interpretation is wrong and the sales of residue gas to plaintiffs in error are made at the outlets of gasoline plants, they are sales in interstate commerce and, therefore, are immune from regulation by the state.

These plaintiffs in error respectfully show that a rehearing should be granted; that the opinion and judgments heretofore filed should be set aside and the order of the Commission should be vacated insofar as the operation of plaintiffs in error are concerned for the following reasons:

I

The basic holding in the Court's opinion that the gas purchased contracts here involved, by virtue of the dedi-

cation provisions therein, constitute sales of residue gas in place is erroneous. It is in direct conflict with

(a) The express stipulations of the parties;
(b) The order of the Commission;
(c) The interpretation placed on these and similar contracts by this and other courts and commissions;

and reflects an interpretation not sponsored before the Commission by any of the parties to these proceedings.

[fol. 758] II

If as held by the Court the gas purchase contracts constitute, by virtue of the dedication provisions therein, sales to plaintiffs in error of the residue gas in place, the affirmance of the order is palpably wrong for the following reasons:

(a) Order No. 26096 can have no application to plaintiffs in error since it purports to fix a price only where there are sales (1) of raw gas at the well-head, (2) of raw gas during or at the conclusion of gathering but before processing and (3) of residue gas after gathering and processing.

(b) If the residue gas belongs to plaintiffs in error in place, Order No. 26096 would, if valid, apply only to the price they get for such gas at their points of sale and not what they may have paid for it in the ground. No one contends that plaintiffs in error do not get a price equivalent to that fixed by the Commission.

III

Neither Cities Service Gas Co. v. Peerless Oil & Gas Co., Phillips Petroleum Co. v. Oklahoma, nor Natural Gas Pipeline Co. of America v. Panoma Corporation is stare decisis as to any issue involved in this appeal.

[fol. 759] IV

When the contracts referred to are properly interpreted as reflecting sales of residue gas at the outlets of gasoline plants, the order is, as to such sales, violative of the Commerce Clause of the Constitution of the United States in

that the sales are made for immediate transportation in interstate commerce, and the gas purchased is immediately so transported.

V

Whether the contracts reflect sales of residue gas in place in the formation or at the outlets of gasoline plants, and whether the dedications and sales be made in commerce and a part thereof, or constitute local activities closely related to and affecting interstate commerce, the order is invalid as applied to plaintiffs in error since the order is "furtively directed" at interstate commerce.

VI

The order is not supported by the state's conservation powers because:

(a) There is no substantial evidence showing that in the absence of the order there will be any substantial waste of gas or violation of correlative rights. [fols. 760-763] (b) There is no evidence showing that in the interest of conservation it is necessary to guarantee to a processor of gas a profit on his operations in gathering and processing gas.

VII

As applied to purchases made by Panhandle Eastern Pipe Line Company and Michigan-Wisconsin Pipe Line Company from Phillips, the Commission's order is violative of the Commerce Clause of the Constitution of the United States and the Due Process Clause of the Fourteenth Amendment thereto in that it is an attempt to exercise jurisdiction over the sale of a commodity in another state.

* * * * * * *

[fol. 764] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants in Error.

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY, Plaintiff in Error,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants in Error.

[fol. 765] AMENDED PETITION FOR REHEARING—Leave is hereby granted to file this 2 day of July, 1954, Harry L. S. Halley, Chief Justice.

Natural Gas Pipeline Company of America, plaintiff in error in cause No. 35,731, and Michigan-Wisconsin Pipe Line Company, plaintiff in error in cause No. 35,732, for their Amended Petition for Rehearing say that the opinion and judgment heretofore filed in said causes (consolidated) and the order of the Corporation Commission of the State of Oklahoma affirmed thereby should be vacated in so far as the operations of said plaintiffs in error are concerned for the following reasons:

1. All those reasons set forth in the petition for Rehearing heretofore filed by said plaintiffs in error, which said reasons are hereby adopted and made a part of this Amended Petition for Rehearing the same as though fully set out herein.

2. Sole and exclusive jurisdiction to fix the prices at which gas is sold to plaintiffs in error under their contracts

with Phillips and Panoma is vested by the Natural Gas Act (15 U. S. C. Sec. 717, et seq.) in the Federal Power Com- [fols. 766-767] mission. This was the holding of the Supreme Court of the United States in Phillips Petroleum Company v. State of Wisconsin, decided June 7, 1954, 22 Law Week 4281, in which the same contract between Michigan-Wisconsin and Phillips here involved was before the Supreme Court. Natural's contract with Panoma is in all material respects identical with that between Phillips and Michigan-Wisconsin, and therefore as applied to the sales to plaintiffs in error, Order No. 96 constitutes an unlawful attempt by the Corporation Commission of the State of Oklahoma to exercise jurisdiction over a subject matter which Congress has delegated exclusively to a Federal regulatory body.

Respectfully submitted, Natural Gas Pipeline Company of America, By Coleman Hayes, One of its attorneys, Michigan-Wisconsin Pipe Line Company, By Coleman Hayes, One of its attorneys.

[fol. 768] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA, Plaintiff in Error,

vs.

THE CORPORATION COMMISSION OF OKLAHOMA, et al., Defendants in Error

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY, Plaintiff in Error,

vs.

THE CORPORATION COMMISSION OF OKLAHOMA, et al., Defendants in Error

No. 35,734

PANHANDLE EASTERN PIPE LINE COMPANY, a corporation, Plaintiff in Error,

vs.

THE CORPORATION COMMISSION OF OKLAHOMA, et al., Defendants in Error.

Consolidated

RESPONSE TO PETITION FOR REHEARING—Filed June 18, 1954 [fol. 769] The within is entered in response to a letter (letter of Coleman Hayes dated June 11, 1954), and a memorandum (memorandum filed by Panhandle Eastern Pipe Line Company in support of its petition for rehearing) both of which call the attention of this court to the recent decision of the Supreme Court of the United States in the "Phillips case" (Phillips Petroleum Company, Petitioner, vs. State of Wisconsin, et al., No. 280, State of Texas, et al., Petitioners vs. State of Wisconsin, et al., No. 281 and Federal Power Commission, Petitioner vs.

State of Wisconsin, Public Service Commission of Wisconsin, No. 418, opinion of June 7, 1954). Neither the letter nor the memorandum suggests reasons why the decision in the Phillips case should be considered controlling. Let us reason briefly.

In the Phillips case, the Supreme Court of the United States reaffirmed the authority of the States, in the process of preventing waste, to prescribe "minimum price orders." It also holds that the Federal Power Commission, for the "protection of consumers against exploitation", has the right to regulate by prescribing a *maximum* price for the [fol. 770] sale of gas. The state's regulation thus constitutes a floor price, and, if issued, a regulation or order of the Federal Power Commission would constitute a ceiling price. As long as there is air space between the floor and the ceiling, there is no conflict.

A regulation or order of the Federal Power Commission can be reviewed in the courts if arbitrary and unreasonable. Presumably it would be unreasonable for the Federal Power Commission to fix a maximum price for the sale of gas at a level which would cause waste of this resource. It is inconceivable that waste would be in the best interest of the consuming public. It may, therefore, be anticipated that there will never be a conflict in the state's regulations preventing waste and a regulation of the Federal Power Commission entered for the protection of the consuming public.

For such a conflict to develop, two things must transpire, first the Federal Power Commission must regulate, and second, such regulation must be antagonistic to a waste [fol. 771] prevention order of a state regulatory body. If such time comes, and it may never, then the conflict ought to be resolved by the Supreme Court of the United States, which court has now approved both types of regulation. No state court ought to anticipate that in such event the Federal courts will elect to approve a Federal Power Commission regulation causing waste. To anticipate a conflict and the resolution thereof in favor of a yet unissued Federal Power Commission order would amount to a present abdication of a state power which ought to be protected.

It ought to be left to the Federal Courts to assert the superiority of the Federal Power.

Since there is presently no conflict, the only remaining contention which can be asserted by the plaintiffs in error is that the Commission's price orders directly affect interstate commerce. Of course they do. Every adjustment in the field price of gas has an impact on gas moving in interstate commerce. But the Supreme Court of the United States has already said that a waste prevention order has [fol. 772] no unreasonable effect upon interstate commerce and, therefore, is not prohibited by the Federal constitution. We think this court might again focus its attention on the following language from the opinion of the Supreme Court in the Cities Service case, Cities Service Gas Company vs. Peerless Oil and Gas Company, et al., 71 S. Ct. 215:

> "The Commerce Clause gives to the Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. Cooley vs. Board of Wardens of Port of Philadelphia, 1851 12 How. 229, 13 L. Ed. 996. It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. Parker v. Brown, 1943, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315; Milk Control Board of Pennsylvania v. Eisenberg Farm Products, 1939, 306 U. S. 346, 59 S. Ct. 528, 83 L. Ed. 752; South Carolina State Highway Dept. v. Barnwell Bros., 1938, 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734. The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate com- [fols. 773-775] merce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. Nor should we lightly translate the quiescence of interest lies in complete freedom from regulation. South Carolina State Highway Dept. vs. Barnwell Bros., supra. Com-

pare Leisy v. Hardin, 1890, 135 U. S. 100, 10 S. Ct. 681, 34 L. Ed. 128, decided prior to the Wilson Act, 26 Stat. 313, 27 U. S. C. A., Sec. 121, with In re Rahrer, 1891, 140 U. S. 545, 11 S. Ct. 865, 31 L. Ed. 572, decided thereafter."

A minimum price order accomplishing waste prevention is constitutional. It is within the boundaries of the right to regulate reserved to the states. The boundaries of the Federal Power Commission's right to regulate encompass only prices inimical to the interest of the consumer. The Supreme Court of the United States has said that a State's regulation within the boundaries of its power to regulate is not prohibited by the Federal constitution. Presumably the prohibition of the Commerce Clause will only apply to regulations bringing on "exploitation" price.

Respectfully submitted, Floyd Green, Conservation Attorney, Corporation Commission of Oklahoma, T. Murray Robinson, Attorney for Texas County Land and Royalty Association.

[fol. 776] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDERS DENYING PETITION FOR REHEARING—July 13, 1954

The clerk is hereby directed to enter the following orders:

35,731—Natural Gas Pipeline Co. of America v. Corporation Comm., et al.

35,732—Michigan-Wisconsin Pipe Line Co. v. Corporation Comm., et al.

35,734—Panhandle Eastern Pipeline Co. v. Corporation Comm., et al.

Petition for rehearing and motion for oral argument denied.

N. B. Johnson, Acting Chief Justice

[fol. 777] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,732

MICHIGAN-WISCONSIN PIPE LINE COMPANY, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Appellees.

No. 35,731

NATURAL GAS PIPELINE COMPANY OF AMERICA, Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 7, 1954

I

Notice is hereby given that Michigan-Wisconsin Pipe Line Company, appellant in the above Cause No. 35,732, and Natural Gas Pipeline Company of America, appellant in the above Cause No. 35,731, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Oklahoma, affirming an order of the Corporation Commission of the State of Oklahoma, which affirmance was entered in the foregoing actions on April 27, 1954.

This appeal is taken pursuant to 28 U .S. C. 1257(2).

[fol. 778] II

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in the transcript the following:

1. Petition in Error filed by Michigan-Wisconsin Pipe Line Company in Cause No. 35,732.

2. Petition in Error filed by Natural Gas Pipeline Company of America in Cause No. 35,731.

3. Petition in Error filed by Panhandle Eastern Pipe Line Company in Cause No. 35,734.

4. Transcript of proceedings (including Exhibits) before the Corporation Commission of the State of Oklahoma in Cause No. CD 3628.

5. Supplemental Brief filed by Michigan-Wisconsin Pipe Line Company and Natural Gas Pipeline Company of America in Causes No. 35,732 and No. 35,731 in December 1953.

6. Supplemental Brief filed by Phillips Petroleum Company in Causes No. 35,732, No. 35,731 and No. 35,734 in February 1954.

7. Response of Plaintiffs in Error in Causes No. 35,731 and No. 35,732 filed in March 1954.

8. Majority and Minority Opinions of the Supreme Court of Oklahoma in Causes No. 35,731, No. 35,732 and No. 35,734.

9. Petition for Rehearing filed in Causes No. 35,731, No. 35,732 and No. 35,734.

[fol. 779] 10. Memorandum supplementing Motion for Rehearing filed by Panhandle Eastern Pipe Line Company in Cause No. 35,734.

11. Amended Petition for Rehearing filed by Natural Gas Pipeline Company of America and Michigan-Wisconsin Pipe Line Company in Causes No. 35,731 and No. 35,732.

12. Response to items 10 and 11 filed by Defendants in Error, certain mineral owners and the Commission.

13. Order overruling Motion for Rehearing in Causes No. 35,731, No. 35,732 and No. 35,734.

14. This Notice of Appeal by Michigan-Wisconsin Pipe Line Company and Natural Gas Pipeline Company of America.

15. Notice of Appeal filed by Panhandle Eastern Pipe Line Company in Cause No. 35,734.

III

The following questions are presented by this appeal:

1. Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of

the Constitution of the United States (Art. I, Sec. 8, Cl. 3) and the Natural Gas Act (15 U. S. C. 717, et seq.), to fix the price of residue gas sold at the outlet of a gasoline plant to an interstate pipeline company for immediate transportation to markets in other states, or to prohibit the production of natural gas if the price fixed for residue gas obtained therefrom is not obtained.

2. Whether, as applied to Michigan-Wisconsin, the Commission's order fixing the price of residue gas sold in Texas is an attempt to exercise extraterritorial jurisdiction and [fol. 780] violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

3. Whether, as applied to appellants, the Commission's order is arbitrary and unreasonable and abrogates private contracts for no public purpose, contrary to the Due Process Clause of the Fourteenth Amendment and the Contract Clause (Art. I, Sec. 10) of the Constitution of the United States.

Jack T. Conn, D. H. Culton, Coleman Hayes, Arthur R. Seder, Jr., Attorneys for Michigan-Wisconsin Pipe Line Company, Appellant in Cause No. 35,732.

Clarence H. Ross, Charles C. McDugald, Warren T. Spies, D. H. Culton, Coleman Hayes, Attorneys for Natural Gas Pipeline Company of America, Appellant in Cause No. 35,731.

[fols. 781-789] I hereby certify that on August 4, 1954, I served a copy of the Foregoing Notice of Appeal to the Supreme Court of the United States on the following:

Murray Robinson, as attorney for appellee "Mineral Owners", Hightower Building, Oklahoma City, Oklahoma, Floyd Green, as attorney for appellee, The Corporation Commission of Oklahoma, care of Corporation Commission of Oklahoma, Oklahoma City, Oklahoma, R. M. Williams, as attorney for appellee, Phillips Petroleum Company, care of Phillips Petroleum Company, Bartlesville, Oklahoma,

William I. Robinson, as attorney for Panhandle Eastern Pipe Line Company, Wichita 2, Kansas, William I. Robinson, as attorney for Northern Natural Gas Company, Wichita 2, Kansas, Joe Rolston, Jr., as attorney for Cities Service Gas Company, Oklahoma City, Oklahoma,
by mailing to each, air mail postage prepaid, a copy thereof.

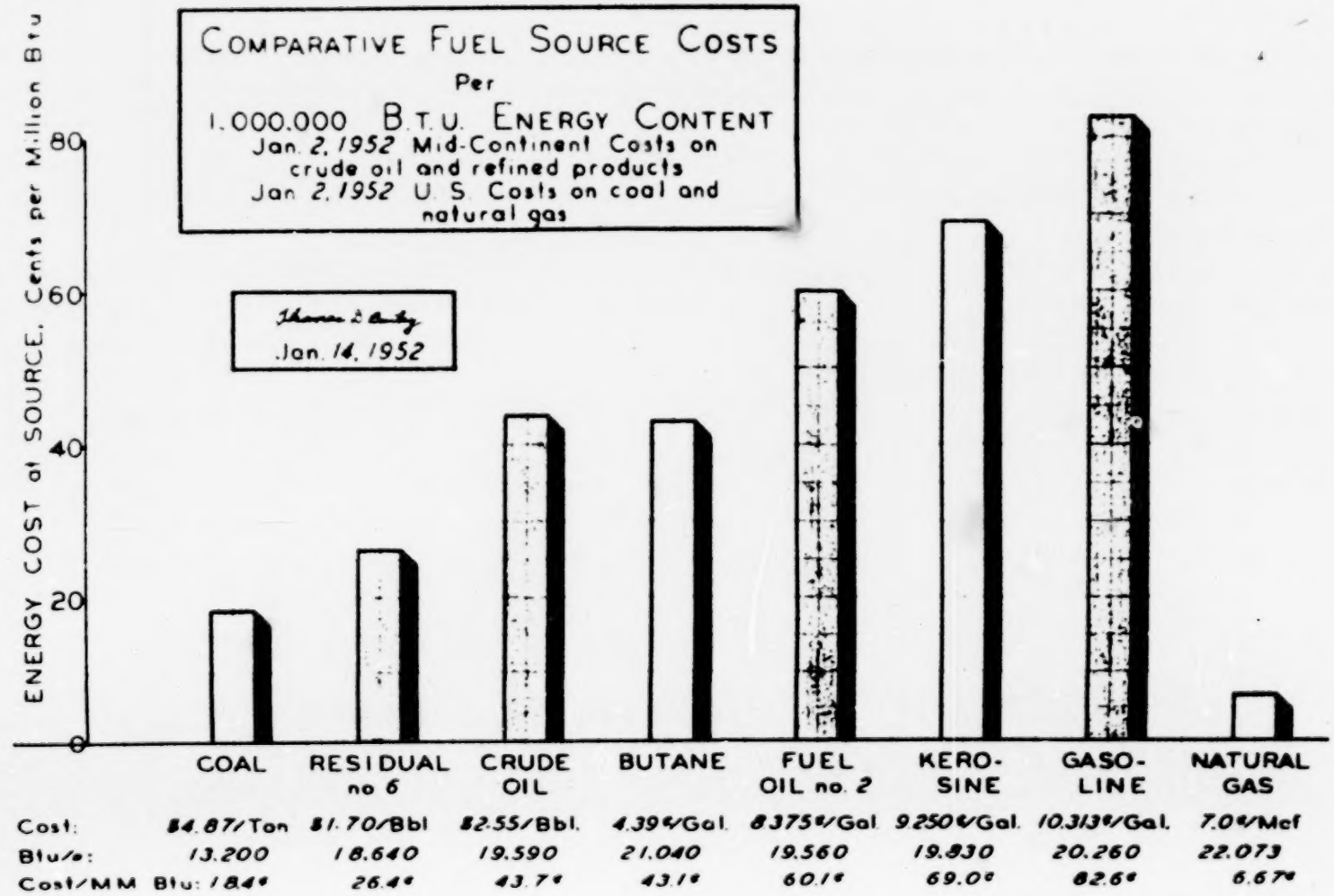
D. H. Cultion, Attorney for appellants, Michigan-Wisconsin Pipe Line Company, Natural Gas Pipeline Company of America.

Fig No 1

789a

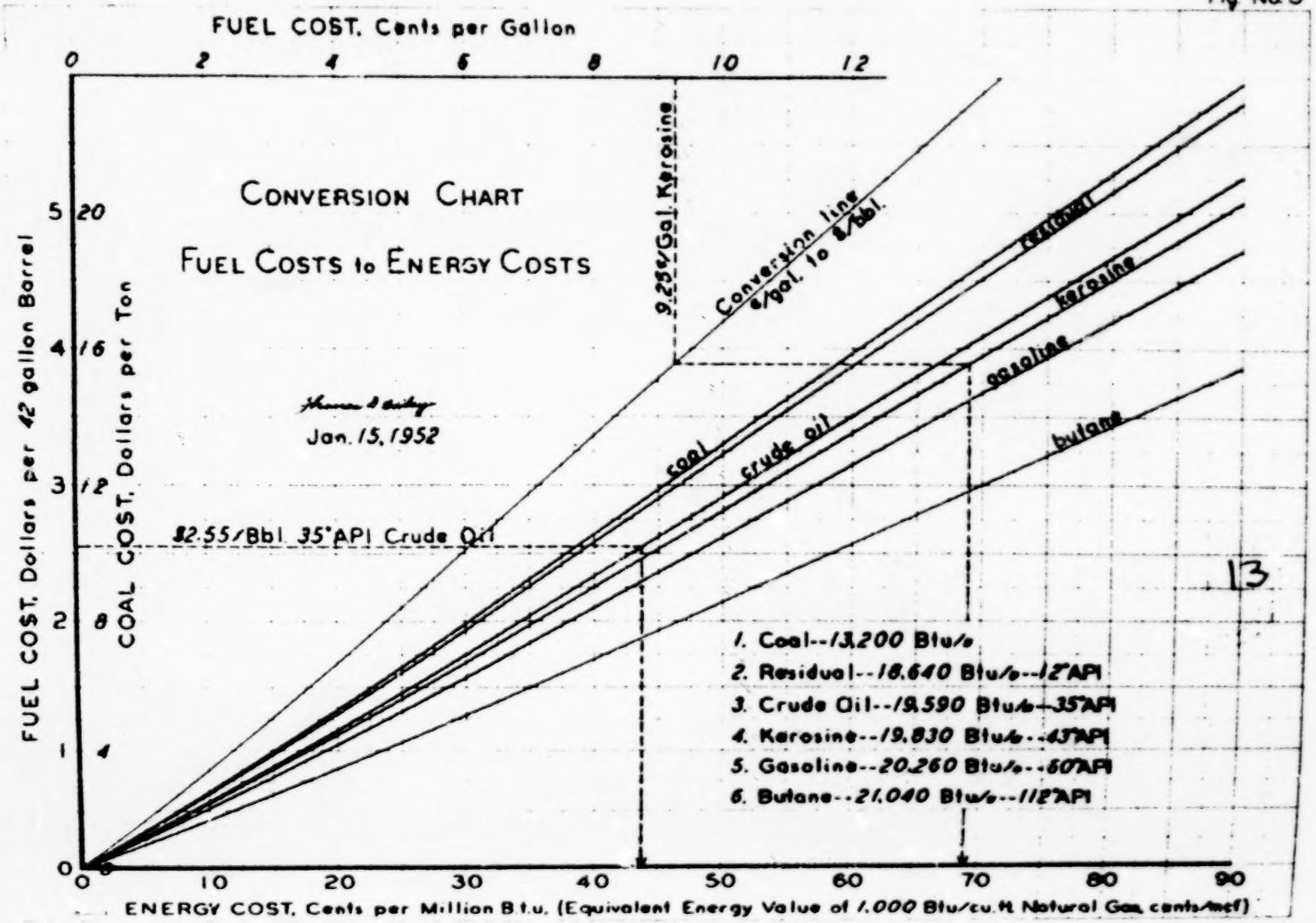
EXHIBITS 11-21, INCLUSIVE

11



COMPARATIVE FUEL SOURCE
ENERGY COST CURVES
Mid-Continent Costs
on crude oil and refined products
U.S. Costs on coal and gas
Jan. 18, 1952
ENERGY COST at SOURCE, Cents per Million B.t.u.
80
60
40
20
gasoline
kerosine
fuel oil no. 2
residual no. 6
crude oil
coal
natural gas
'39
'40
'41
'42
'43
'44
'45
'46
'47
'48
'49
'50
'51
'52
YEARS

Fig. No. 3

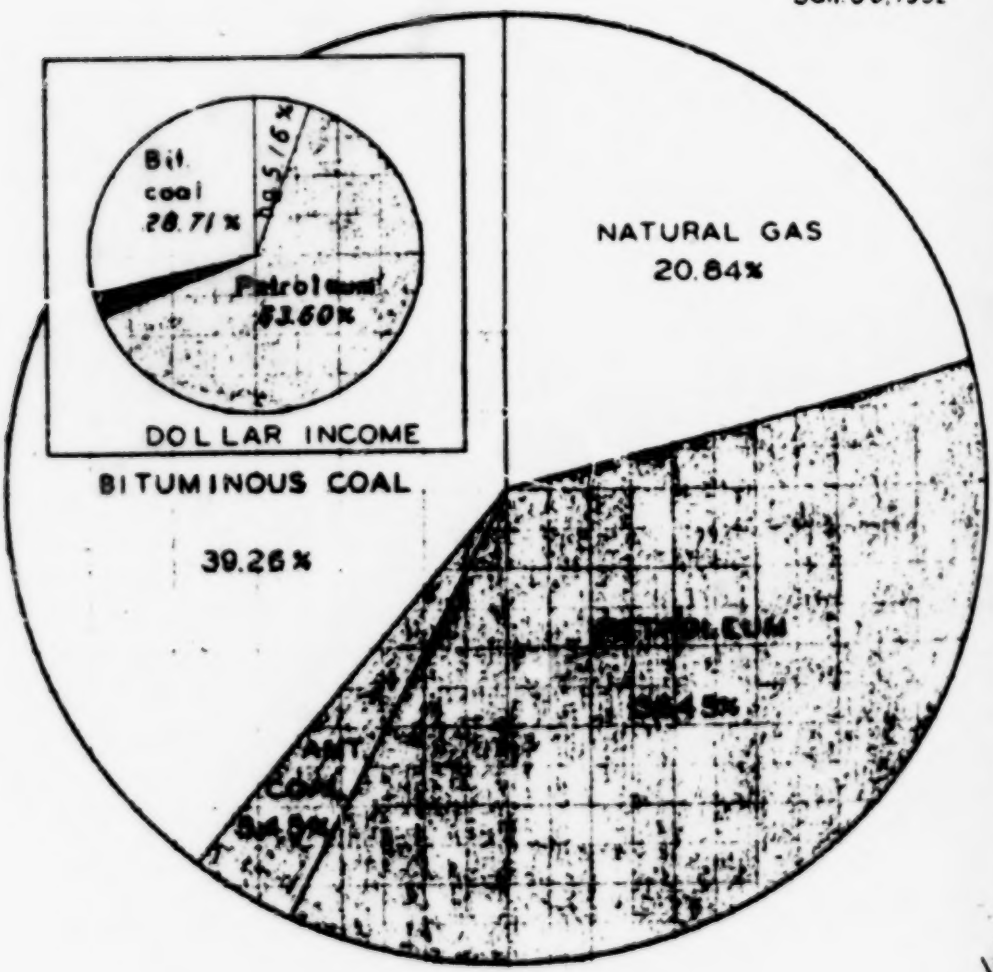

FUEL COST, Cents per Gallon
0
2
4
6
8
10
12
CONVERSION CHART
FUEL COSTS to ENERGY COSTS
Thomas J. Bailey
Jan. 15, 1952
9.25¢/Gal. Kerosine
Conversion line ¢/gal. to $/Bbl.
$2.55/Bbl. 35°API Crude Oil
FUEL COST, Dollars per 42 gallon Barrel
COAL COST, Dollars per Ton
5
20
4
16
3
12
2
8
1
4
0
residual
kerosine
gasoline
butane
coal
crude oil
13
1. Coal--13,200 Btu/#
2. Residual--18,640 Btu/#--12°API
3. Crude Oil--19,590 Btu/#--35°API
4. Kerosine--19,830 Btu/#--43°API
5. Gasoline--20,260 Btu/#--60°API
6. Butane--21,040 Btu/#--112°API
0
10
20
30
40
50
60
70
80
90
ENERGY COST, Cents per Million B.t.u. (Equivalent Energy Value of 1,000 Btu/cu.ft. Natural Gas, cents/mcf)

789c

Fig No.

Analysis of Energy Content and Source Cost of 1950 Mineral Fuel Production in the United States

Thomas D. Cady
Jan. 30, 1952



Energy Supplied

Fig No 4

B A S I C E N E R G Y E Q U I V A L E N T S

(Natural Gas, Crude Oil and Coal)

5.5546 Mcf (cost 38.882¢) = 1 Bbl. (cost $2.55)

1,000 Mcf (cost $70.00) = 180.11 Bbls. (cost $459.28)

25.1424 Mcf (cost $1.76) = 1 Ton (cost $4.87)

1,000 Mcf (cost $70.00) = 39.773 Tons (cost $193.70)

1 Ton (cost $4.87) = 4.528 Bbls. (cost $11.55)

Note: Based on specific gravities, B.t.u.-per-pound energy content, and source costs listed for natural gas, crude oil and coal in Table 1.

TABLE 1--COMPARATIVE FUEL SOURCE COSTS

(January 2, 1952 Mid-Continent Costs)

	Gravity	Btu/lb.	Btu/gal.	Source Costs	
				Unit	MM Btu
Natural Gas	0.625	22,073[1]		7.0¢/mcf[2]	6.67¢
Gasoline	60°	20,260[3]	124,800	10.313¢/gal.	82.6¢
Kerosine	43°	19,830[3]	134,100	9.250¢/gal.	69.0¢
Fuel Oil No. 2	34°	19,560[3]	139,400	8.375¢/gal.	60.1¢
Butane	112°	21,040[3]	101,940	4.39¢/gal.	43.1¢
Crude Oil	35°	19,590[3]	138,800	$2.55/bbl.	43.7¢
Residual No. 6	12°	18,640[3]	153,200	$1.70/bbl.	26.4¢
Coal		13,200		$4.87/ton[2]	18.4¢

1. Equivalent to 1,050 B.t.u. per cu. ft.--weight 47.57 lb./mcf.
2. Estimated United States average for January 1, 1952.
3. U. S. Dept. of Commerce Bureau of Standards Misc. Pub. 97.

TABLE 2--FUEL SOURCE COSTS AND RESULTANT 4M BTU CONTENT COSTS FOR THE YEARS 1939 TO 1951
MID-CONTINENT COSTS ON CRUDE OIL AND REFINED PRODUCTS
UNITED STATES AVERAGE COSTS ON COAL AND NATURAL GAS

Natural Gas | Gasoline | Kerosine | Fuel Oil #2 | Residual #6 | Crude Oil 35° API | Coal (Bit.)

TABLE 2--FUEL SOURCE COSTS AND RESULTANT ENERGY CONTENT COSTS FOR THE YEARS 1939 TO 1951
MID-CONTINENT COSTS ON CRUDE OIL AND REFINED PRODUCTS
UNITED STATES AVERAGE COSTS ON COAL AND NATURAL GAS

Year & Date	Natural Gas ¢/Mcf	Natural Gas ¢/MM Btu	Gasoline ¢/Gal	Gasoline ¢/MM Btu	Kerosine ¢/Gal	Kerosine ¢/MM Btu	Fuel Oil #2 ¢/Gal	Fuel Oil #2 ¢/MM Btu	Residual #6 ¢/bbl	Residual #6 ¢/MM Btu	Crude Oil 35° API ¢/bbl		Crude Oil 35° API ¢/MM Btu	Coal (Bit.) ¢/ton	Coal (Bit.) ¢/MM Btu
1939															
Jan. 5			4.500	36.1¢	4.188	31.3¢	3.438	24.7¢	0.55	8.5¢	1.00		17.1¢		
July 6	4.9	4.67¢	5.063	40.6¢	3.750	28.0¢	2.875	20.6¢	0.50	7.8¢	1.00		17.1¢	1.84	7.0¢
1940															
Jan. 4			4.688	37.6¢	3.875	28.9¢	3.313	23.8¢	0.50	7.8¢	1.00		17.1¢		
July 4	4.5	4.28¢	4.688	37.6¢	3.938	29.4¢	3.313	23.8¢	0.525	8.1¢	1.00		17.1¢	1.91	7.2¢
1941															
Jan. 2			4.625	37.1¢	4.188	31.3¢	3.625	26.0¢	0.625	9.7¢	1.00		17.1¢		
July 3	4.9	4.67¢	6.063	48.6¢	4.625	34.5¢	3.563	25.5¢	0.875	13.6¢	May 1.15		19.7¢	2.19	8.3¢
1942															
Jan. 1			6.125	49.1¢	4.625	34.5¢	3.750	26.9¢	0.875	13.6¢	1.15		19.7¢		
July 2	5.1	4.86¢	5.688	45.6¢	4.625	34.5¢	3.438	24.7¢	0.875	13.6¢	1.15		19.7¢	2.36	8.9¢
1943															
Jan. 7			5.938	47.6¢	4.500	33.6¢	3.563	25.5¢	0.875	13.6¢	1.15		19.7¢		
July 1	5.2	4.95¢	5.938	47.6¢	4.500	33.6¢	3.563	25.5¢	0.825	12.8¢	1.15		19.7¢	2.69	10.2¢
1944															
Jan. 6			5.938	47.6¢	4.250	31.7¢	3.563	25.5¢	0.875	13.6¢	1.15		19.7¢		
July	5.1	4.86¢	5.875	47.1¢	4.500	33.6¢	3.625	26.0¢	0.935	14.5¢	1.15		19.7¢	2.92	11.1¢
1945															
Jan. 5			5.875	47.1¢	4.500	33.6¢	3.625	26.0¢	0.935	14.5¢	1.15		19.7¢		
July	4.9	4.67¢	5.875	47.1¢	4.500	33.6¢	3.625	26.0¢	0.935	14.5¢	1.15		19.7¢	3.06	11.6¢
1946															
Jan. 5			5.813	46.6¢	4.500	33.6¢	3.625	26.0¢	0.935	14.5¢	Apr. 1.25		21.4¢		
July	5.3	5.05¢	6.000	48.1¢	5.000	37.3¢	4.250	30.5¢	1.145	17.8¢	July 1.50		25.7¢	3.44	13.0¢
1947											Nov. 1.60		27.4¢		
Jan.			6.875	55.1¢	5.875	43.8¢	5.000	35.9¢	1.360	21.1¢	Mar. 1.85		31.7¢		
July 5	6.0	5.71¢	8.250	66.1¢	7.138	53.6¢	6.500	46.7¢	2.225	34.5¢	Sept. 2.05		35.2¢	4.16	15.8¢
1948											Dec. 2.55		43.7¢		
Jan. 1			10.875	87.2¢	10.000	74.7¢	9.625	69.1¢	2.475	38.4¢	2.55		43.7¢		
Apr. 8			11.000	88.1¢	10.000	74.7¢	9.563	68.6¢	2.675	41.5¢	2.55		43.7¢		
July 1	6.5	6.19¢	11.500	92.2¢	10.000	74.7¢	9.250	66.4¢	2.575	40.0¢	2.55		43.7¢	4.99	18.9¢
Oct. 7			10.375	83.1¢	9.625	71.8¢	9.125	65.5¢	2.100	32.6¢	2.55		43.7¢		
1949															
Jan. 6			10.125	81.1¢	9.375	70.0¢	8.500	61.0¢	1.55	24.1¢	2.55		43.7¢		
Apr. 7			9.313	74.6¢	8.250	61.5¢	7.375	52.9¢	1.05	16.3¢	2.55		43.7¢		
July 7	6.3	6.00¢	9.750	78.2¢	8.250	61.5¢	6.750	48.4¢	0.875	13.6¢	2.55		43.7¢	4.88	18.5¢
Oct. 6			9.813	78.6¢	8.000	59.7¢	6.875	49.3¢	0.975	15.1¢	2.55		43.7¢		
1950															
Jan. 5			9.750	78.2¢	8.125	60.6¢	7.188	51.6¢	1.225	19.0¢	2.55		43.7¢		
Apr. 6			9.563	76.7¢	8.563	63.8¢	7.688	55.2¢	1.55	24.1¢	2.55		43.7¢		
July 6	6.51	6.20¢	10.313	82.6¢	8.375	62.5¢	7.500	53.8¢	1.65	25.6¢	2.55		43.7¢	4.84	18.3¢
Oct. 5			10.438	83.6¢	8.938	66.7¢	8.313	59.7¢	1.70	26.4¢	2.55		43.7¢		
1951															
Jan. 4			10.313	82.6¢	9.313	69.5¢	8.500	61.0¢	1.85	28.7¢	2.55		43.7¢		
Apr. 5			10.313	82.6¢	9.313	69.5¢	8.438	60.6¢	1.85	28.7¢	2.55		43.7¢		
July 5	6.97*	6.64¢	10.375	83.1¢	9.188	68.6¢	8.313	59.7¢	1.775	27.6¢	2.55		43.7¢	4.87*	18.4¢
Oct. 4			10.375	83.1¢	9.188	68.6¢	8.313	59.7¢	1.75	27.2¢	2.55		43.7¢		
1952															
Jan. 7	7.00*	6.67¢	10.313	82.6¢	9.250	69.0¢	8.375	60.1¢	1.70	26.4¢	2.55		43.7¢	4.87*	18.4¢

*Estimated from data available and past trends.

TABLE 3--COMPARATIVE FUEL PRICES IN CHICAGO USING JANUARY 2, 1952 MID-CONTINENT SOURCE COSTS AND OKLAHOMA TO CHICAGO TRANSPORTATION RATES

	¢/MM Btu	Transportation Rates		Wholesale Cost/MM Btu	
		Per 100 Lbs.	Per MM Btu	Source	Chicago
Natural Gas[1]	53.00	12.64¢[2]	6.70¢	9.59¢	16.3¢
Gasoline	49.36	22.42¢[2]	11.07¢	82.6¢	93.7¢
Kerosine	50.43	20.43¢[2] 45.31¢	10.30¢ 22.84¢	69.0¢	79.3¢ 91.8¢
Fuel Oil No. 2	51.12	19.37¢[2] 45.31¢	9.90¢ 23.16¢	60.1¢	70.0¢ 83.3¢
Butane	47.53	28.50¢[2] 65.51¢	13.55¢ 31.14¢	43.1¢	56.6¢ 74.2¢
Crude Oil	51.05	12.77¢[2]	6.52¢	43.7¢	50.2¢
Residual No. 6	53.65	45.31¢	24.31¢	26.4¢	50.7¢
Coal (lump)[3]	83.33	16.20¢	13.50¢	19.3¢	[illegible]

1. For 0.71376 gravity 1,025 B.t.u. per cubic foot natural gas produced in Texas County, Oklahoma--well head cost 9.8262 cents per M.c.f.--average transportation rate received by Natural Gas Pipeline Company of America in 1950 on natural gas transported and sold to other gas utilities.
2. Pipe line; others rail.
3. For a 12,000 B.t.u. per lb. central Illinois bituminous coal--average mine cost $4.625 per ton--railroad shipping charges from central Illinois to Chicago $3.24 per ton.

TABLE 4--COMPARATIVE FUEL PRICES IN OMAHA, NEBRASKA, USING JANUARY 2, 1952 MID-CONTINENT SOURCE COSTS AND OKLAHOMA TO OMAHA TRANSPORTATION RATES

	¢/MM Btu	Transportation Rates		Wholesale Cost/MM Btu	
		Per 100 Lbs.	Per MM Btu	Source	Omaha
Natural Gas[1]	53.00	17.45¢[2]	9.25¢	9.59¢	18.8¢
Gasoline	49.36	16.23¢[2]	8.01¢	82.6¢	90.6¢
Kerosine	50.43	14.79¢[2] 36.58¢	7.46¢ 18.44¢	69.0¢	76.5¢ 87.4¢
Fuel Oil No. 2	51.12	14.03¢[2] 36.58¢	7.17¢ 18.70¢	60.1¢	67.3¢ 78.8¢
Butane	47.53	20.64¢[2] 54.59¢	9.81¢ 25.92¢	43.1¢	52.9¢ 69.0¢
Crude Oil	51.05	11.09¢[2]	5.66¢	43.7¢	49.4¢
Residual No. 6	53.65	36.58¢	19.64¢	26.4¢	46.0¢
Coal[3]	77.82	24.15¢	18.79¢	26.3¢	45.1¢

1. For 0.71376 gravity 1,025 B.t.u. per cubic foot natural gas produced in Texas County, Oklahoma--well head cost 9.8262 cents per M.c.f.--average transportation rate received by Northern Natural Gas Company in 1950 on natural gas transported and sold to other gas utilities.
2. Pipe line; others rail.
3. For a 12,850 B.t.u. per lb. Henryetta, Oklahoma bituminous coal--average mine cost $6.75 per ton--railroad shipping charges from Henryetta, Oklahoma to Omaha $4.83 per ton.

TRBI

TABLE 5--COMPARATIVE FUEL PRICES IN KANSAS CITY, MISSOURI, USING JANUARY 2, 1952 MID-CONTINENT SOURCE COSTS AND OKLAHOMA TO KANSAS CITY TRANSPORTATION RATES

	#/MM Btu	Transportation Rates		Wholesale Cost/MM Btu	
		Per 100 Lbs.	Per MM Btu	Source	Kansas City
Natural Gas[1]	53.00	13.41¢[2]	7.11¢	9.59¢	16.7¢
Gasoline	49.36	10.82¢[2]	5.34¢	82.6¢	87.9¢
Kerosine	50.43	9.86¢[2] 27.30¢	4.97¢ 13.76¢	69.0¢	74.0¢ 82.8¢
Fuel Oil No. 2	51.12	9.35¢[2] 27.30¢	4.78¢ 13.96¢	60.1¢	64.9¢ 74.1¢
Butane	47.53	13.76¢[2] 41.49¢	6.54¢ 19.72¢	43.1¢	49.6¢ 62.8¢
Crude Oil	51.05	8.40¢[2]	4.29¢	43.7¢	48.0¢
Residual No. 6	53.65	27.30¢	14.64¢	26.4¢	41.0¢
Coal[3]	77.82	18.50¢	14.39¢	26.3¢	40.7¢

1. For 0.71376 gravity 1,025 B.t.u. per cubic foot natural gas produced in Texas County, Oklahoma--well head cost 9.8262 cents per M.c.f.--average transportation rate received by Cities Service Gas Company in 1950 on natural gas transported and sold to other gas utilities.
2. Pipe line; others rail.
3. For a 12,850 B.t.u. per lb. Henryetta, Oklahoma bituminous coal--average mine cost $6.75 per ton--railroad shipping charges from Henryetta, Oklahoma to Kansas City $3.70 per ton.

TABLE 6--ANALYSIS OF ENERGY CONTENT AND SOURCE COST OF 1950 MINERAL FUEL PRODUCTION IN THE UNITED STATES

	Volume[1] Produced	Heating Value Btu/#	Energy Content MMMM Btu	Total Cost[2] MM $	% of Total Heat Content	% of Total Dollar Cost
Natural Gas	6,892,678	22,073[3]	7,237	449	20.84%	5.16%
Petroleum[4]	2,171,187	19,590[5]	12,658	5,537	36.45%	63.60%
Bit. Coal	44,094	13,600	1,199	220	3.45%	2.53%
Bit. Coal	516,311	13,200	13,630	2,499	39.26%	28.71%
TOTALS:			34,724	8,705		

1. Volume listed in MMcf, M Bbls., and M Tons for natural gas, petroleum and coal, respectively.
2. Using 1950 unit source costs shown in Table 2.
3. Equivalent to 1,050 Btu/cu. ft. 0.625 gravity natural gas.
4. Includes 1,943,776,000 barrels of crude oil and 227,411,000 barrels of natural-gas liquids.
5. Equivalent to 5,829,750 Btu/bbl. 35° API gravity crude oil.

[fols. 790-797] EXHIBITS 33 AND 34

Exhibit 33, pp. 797-812, is a contract entered into between Phillips Petroleum Company as seller and Panhandle Eastern Pipe Line Company as purchaser, dated April 5, 1943. Exhibit 34 (p. 813-818) is a supplement thereto, dated April 25, 1944.

The contract of April 5, 1943, contained, among others, provisions to the following effect:

(1) Panhandle was stated to be the owner of a gas pipeline system which secured the greater part of its supply of gas in the Hugoton gas field located in Kansas, Oklahoma and Texas and the Panhandle Field located in Texas; that Phillips was the owner of valid gas leases covering 175,000 acres of land (referred to as the "dedicated acreage") in the Hugoton Field within an area in Texas County, Oklahoma, and the northern parts of Sherman and Hansford Counties, Texas, fully described in the contract and that Panhandle was the owner of gas leases covering approximately 50,000 acres within said area. It was then stated:

[fol. 797a] "It is understood that the dedication of Phillips' said gas leases within said area above described to Panhandle Eastern's pipe line system, as hereinafter provided, will afford Panhandle Eastern a needed additional reserve of gas for its present and anticipated markets and that the gathering, processing and delivering of gas in Panhandle Eastern's pipe line system by Phillips, as hereinafter provided, will assure to Panhandle Eastern a supply of gas from Phillips' dedicated acreage and from Panhandle Eastern's acreage within the area above described with a minimum expenditure by Panhandle Eastern for development, gathering and processing of gas. Phillips hereby dedicates all of its lease within the area above described to the performance of this contract and agrees to sell and deliver to Panhandle Eastern all gas produced from said dedicated acreage, as hereinafter provided; and further agrees to process for Panhandle Eastern, in accordance with the terms of this contract,

all gas produced from Panhandle Eastern's acreage within said area above described."

(2) Subject to the provisions of the contract, Phillips agreed to sell and Panhandle agreed to purchase 28 million cubic feet of gas daily during each year when the total volume of gas delivered into Panhandle's system should not exceed 180 million cubic feet daily with increasing percentages as the total volumes of gas delivered into Panhandle's system should increase. The obligation was limited, however, to "the volumes that may be produced from the dedicated acreage."

(3)The delivery point was to be agreed upon by the parties at a point within 6 miles from Guymon, Oklahoma. Panhandle agreed to construct a pipeline from its Liberal station to said point of delivery of sufficient size and capacity to receive the gas to be delivered under the contract. Phillips agreed to lay all gathering lines to the wells on the dedicated acreage and to construct a plant for the recovery of hydrocarbons and a dehydrating plant for the dehydration of the gas to be delivered under the contract and to gather and deliver the gas to Panhandle at the point of delivery. At Panhandle's option, Phillips agreed to construct such plant of sufficient size to process and dehydrate the gas produced by Panhandle from its [fol. 797b] leases in the area, Phillips retaining one-half of the hydrocarbon products extracted.

(4) Gas from the dedicated acreage was to be delivered at a pressure base of not less than 250 lbs. per square inch during the first five years, not less than 200 pounds for the next five years, and thereafter at not less than 100 lbs.

(5) Phillips agreed to develop the dedicated acreage as needed for the performance of the contract but was not required to drill wells which would not be drilled by a reasonably prudent operator under similar circumstances and was not required to retain by payment of delay rentals acreage which, in its judgment, had been condemned by development. Phillips was also authorized to substitute by exchange leases on other land so long as such substitutions should not operate to reduce the total area of the dedicated acreage.

(6) Delivery of gas from the dedicated acreage was to be commenced as Phillips should have drilled wells productive of gas and the parties should install facilities to effect such deliveries; and each party agreed to use its best efforts to obtain any necessary consent and obtain all necessary materials and install the necessary facilities for the performance of the contract. However, recognizing that due to the national emergency then existing, Phillips, though using its best efforts to do so, might not be able to obtain the materials required for the construction of its hydrocarbon recovery plant and dehydration plant, the parties agreed that if Phillips and Panhandle were able to secure the necessary materials for the other facilities required, Panhandle would receive the gas and to the extent of its capacity at the Liberal plant recover hydrocarbons from and dehydrate such gas and deliver to Phillips one-half the hydrocarbons so recovered until such a time as Phillips should be able to obtain the necessary materials.

[fol. 797c] (7) Phillips was given the right prior to delivery of gas from the dedicated acreage to deliver gas from wells drilled on acreage outside the area described, whereupon those wells would be dedicated to the supplying of gas to Panhandle.

(8) Phillips' obligation to deliver gas under the contract was limited to gas that could be lawfully produced from wells drilled on the dedicated acreage and other wells connected under certain options contained in the contract.

(9) All gas delivered was required to contain less than one grain of hydrogen sulphide and less than 20 grains of total sulphur per 100 feet. Heating value was to be not less than 950 British Thermal Units per cubic foot, and if less than 975, adjustment of price was to be made proportionally. All gas delivered was to be dehydrated by Phillips to a point sufficient that formation of hydrates in the line would not interfere with the transportation of the gas through Panhandle's line to its Liberal station.

(10) Panhandle agreed to pay for the gas delivered, whether in its natural state or with recoverable hydrocarbons removed, 4¢ per thousand cubic feet, the price to be increased ½ cent per thousand cubic feet each succes-

sive five-year period. Provision was made for arbitration of price after 15 years and protection against abnormal inflation or deflation through a consideration of the Federal Bureau of Labor's statistical Index of wholesale prices of commodities and increases of prices allowed by the Federal Power Commission to Panhandle on its sales.

(11) The unit of measurement for computing volume was fixed at one cubic foot at an absolute pressure of 16.4 pounds per square inch, at a temperature of 60° Fahrenheit, [fol. 797d] computed in accordance with Boyle's Law with allowances for deviations from Boyle's Law. Phillips was required to install, maintain and operate meters through which the gas delivered should be measured.

The contract of April 5, 1943, was amended by letter agreement (Ex. 34) of April 25, 1944 (pp. 813). By that document it was among other things agreed:

(a) The delivery point for gas from the dedicated acreage was stated to be a point selected by Phillips in Section 7, Block 1, Hansford County, Texas, and not more than 15 miles from Panhandle's Hansford Station. Panhandle agreed to construct a pipeline from said delivery point to the intake of its said compressor station. Phillips agreed to lay all gathering lines to the wells on the dedicated acreage and to construct a plant for the recovery of hydrocarbons and a dehydration plant, both plants to be located adjacent to the delivery plant, and to gather and deliver the gas to Panhandle at such delivery point. Phillips also agreed, at the option of Panhandle, to provide capacity in such plants for the recovery of hydrocarbons from and the dehydration of the gas from Panhandle's acreage within the area and process such gas in said plant, retaining for itself one-half of the hydrocarbon products so recovered.

(b) The pressure of the gas to be delivered at the point referred to from the dedicated acreage was fixed at not less than 100 pounds below the average of the shut-in pressures of the wells and in any event not less than 100 pounds per square inch. Until the construction by Panhandle of a compressor station, the point at which such pressures

would be maintained at the point of delivery and, thereafter, at the intake of Panhandle's compressor station. [fols. 797c-818] (c) Panhandle agreed that when, in order to transmit the gas through its pipeline, it should be necessary to compress the gas to pressures higher than those maintained by Phillips, the compressor would be installed on the upstream or well side of, and adjacent to Phillips' gasoline plant, and Phillips agreed that its gasoline plant would be of such construction that it would operate safely at exhaust pressures of the compressors up to 550 pounds. The compressors were to be installed and operated by Panhandle. Provision was made for an adjustment to Panhandle for the shrinkage of volumes of gas resulting from extraction of hydrocarbons and gas used for fuel in the operation of the extraction plant.

* * * * * * *

[fol. 819] 8. In lieu of printing Exhibits 35, 36 and 37, the following statement with reference thereto may be printed:

EXHIBITS 35, 36 AND 37

Exhibit 35 (pp. 819-891) is a contract entered into between Phillips Petroleum Company, as seller, and Michigan-Wisconsin Pipe Line Company, as purchaser, on December 11, 1945. Exhibits 36 (pp. 892-907) and 37 (pp. 908-913) are amendments to that contract dated August 9, 1948, and December 1, 1949, respectively.

The contract of December 11, 1945, contained among others provisions to the following effect:

(1) Buyer represented that it proposed to construct and operate a gas pipe line system extending from the point of delivery specified in the contract in the Hugoton Gas Field in Hansford County, Texas, in a northeasterly direction to points of connection with distribution systems in Wisconsin and Michigan, or either of them, and at intermediate points, and that in order to assure a supply of natural gas for the pipe line it desired to have dedicated and made available to the pipe line gas acreage having [fol. 819a] underlying commercially recoverable gas re-

serves as provided in the contract. Seller represented that it owned or controlled by gas purchase contracts gas leases on acreage in the Hugoton Field in Dallam, Sherman and Hansford Counties, Texas, and Texas County, Oklahoma, shown by cross-hatching on the map attached to the contract, the gas leases owned by Seller and those controlled under gas purchase contracts being separately shown on Exhibit A thereto; that Seller was willing, subject to the provisions of the contract and the reservations therein contained, to make available to the pipe line the gas reserves underlying said acreage.

(2) Buyer agreed to proceed with diligence to procure all governmental authority, permits and rights necessary for the construction and operation of the pipe line, and upon procuring same to proceed with diligence in the construction of the pipe line. Provision was made authorizing the Seller to terminate the contract under certain contingencies relating to failure to obtain from the Federal Power Commission a Certificate of Convenience and Necessity, or the failure of Buyer to carry on the construction program set forth in the contract.

(3) Seller agreed upon construction of the pipe line to proceed with diligence in the drilling of wells and the installation of facilities, but in connection therewith was authorized to terminate the contract on certain contingencies therein set forth.

(4) Reference was made to acreage identified on Exhibit A attached thereto as "Phillips' leased acreage", covered by gas leases owned by Seller, and to acreage identified on said Exhibit as "Phillips' contracted acreage", covered by gas purchase contracts between producers as sellers and Seller as buyer, a copy of each of which contracts was attached thereto, and it was stated:

> "Seller hereby dedicates to the pipe line and agrees to sell and deliver to Buyer all gas produced and [fol. 819b] saved from the acreage covered by this Contract and shown on Exhibit A";

excepting therefrom all volumes produced from depths below sea level, all volumes used for the development and operation of leases and reserved by lessors in leases for

domestic purposes, all volumes lost by shrinkage due to removal from the gas of the products Seller was required or entitled to remove under the terms of the contract, all volumes used for operation of Seller's processing plants and the operation of facilities used for delivery of gas to Buyer, and all other volumes of gas reserved by the terms of gas purchase contracts set forth in Exhibit A attached.

(5) Seller agreed to pay all delay rentals to keep its gas leases in good standing and continue the development of such leases as needed for the performance of the contract, but was not required to drill more than one well to each 640 acres or to drill wells which would not be drilled by a reasonably prudent operator under similar circumstances. Seller was not required to retain by payment of delay rentals acreage which in its judgment had been condemned by development or producing acreage which could no longer be operated at a profit, and as to such leases provision was made giving Buyer an opportunity to acquire such leases. Provision was also made for substitution of other acreage for acreage described in the contract.

(6) Seller was not required to deliver to Buyer greater volumes of gas than could be legally produced from the acreage covered by the contract less the volumes of gas excepted and reserved by the contract.

(7) Subject to the provisions of the contract, Seller agreed to sell and Buyer to purchase all of Buyer's requirements for gas in the pipe line in accordance with minimum and maximum quantities set forth therein, the maximum daily volume commencing with July 1, 1952, being 343 million cubic feet and the minimum volume 255 [fol. 819c] million cubic feet.

(8) The point of delivery was fixed at the outlet of a meter station to be installed and operated by Seller at a location within one mile of the southwest corner of Section 8, Block 1, Hansford County, Texas, and the delivery pressure to be not less than 200 pounds per square inch.

(9) The contract contained provisions as to quality of the gas deliverable under the contract. Among other things, such provision required that the gas be free of water and hydrocarbons in liquid form; that it contain not more than one grain of hydrogen sulfide or more than 20 grains of

total sulphur per hundred cubic feet; that the heating value be not less than 970 nor more than 1,020 British Thermal Units. Within the limits of the minimum heating value, Seller retained the right to remove from the gas any constituents other than methane and to remove such methane as is necessarily removed from the gas in the process of removing other constituents.

(10) To meet Seller's operating conditions, Seller reserved the option to install its natural gasoline plant for the extraction of hydrocarbons from the gas delivered on the pipe line downstream from Buyer's initial compressor station located at or near the delivery point. In the event plants were located downstream from the compressor station, the contract provided for certain allowances for shrinkage in extraction and other matters not deemed necessary to be here stated. (The plant, when constructed, was not so located but was located on the upstream side of the compressor station.)

(11) Buyer agreed to pay Seller five cents per thousand cubic feet for the first five-year period, and provision was made for increases during subsequent five-year periods, and in order to protect the parties from too great burden in the event of abnormal inflation or deflation of prices generally, provision was made for adjustment in accordance with the Federal Bureau of Labor's statistical index of wholesale prices of all commodities.

[fols. 819d-915] (12) The unit of volume of gas for the application of the price provisions of the contract and the volumes to be delivered was fixed at one cubic foot at an absolute pressure of 14.735 pounds per square inch at a temperature of 60 degrees Fahrenheit computed in accordance with Boyles' law with corrections for deviation.

(13) The term of the contract was fixed at so long as gas should be produced from the acreage covered by the gas leases and gas purchase contracts in paying quantities from depths above sea level, or until the amount of gas available to Buyer should be so reduced that further operation of the pipe line would, in Buyer's judgment, no longer be profitable and such operation should be discontinued.

The contract of August 9, 1948, amended the contract of December 11, 1954, primarily with respect to increased dedication of acreage and changing the dates by which cer-

tain operations were to be completed by Purchaser. Some changes were also made by that contract in the quantities delivered within certain periods and the base price was increased so as to commence with seven and one-half cents per thousand cubic feet for all gas delivered during the first five years of delivery with certain increases and adjustments under certain circumstances therein.

The contract of December 1, 1949, further amended the contract of December 11, 1945. Primarily that contract required measurement of gas be at 14.65 pounds per square inch in order to comply with the Texas Gas Measurement Statute, and the price to be paid for such gas was proportionally reduced when applied to gas measured on that basis.

* * * * * * *

[fol. 316]

EXHIBIT 39

Phillips Petroleum Company

Hugoton Area

Liquid Income Versus Gathering and Processing Costs Based on the Year 1951 and a Commission Order of 9.82¢ per M. C. F. of Gas Produced and Purchased at the Wellhead

	In Cents per M. C. F. of Gas Produced and Purchased	
	Sherman System	Hansford System
Income from Liquids:		
25-70	2.09¢	2.13¢
Less Handling Allowance	.05	.05
	2.04	2.08
Butane	.21	.49
Propane	.08	.38
Total	2.33	2.95
Gathering and Processing Costs:		
Gathering	1.20	1.06
Processing	.38	.84
Extraction, Fuel and Loss @ 9.82¢ per M.	.25	.53
Residue Delivery	.01	.01
Total	1.84	2.44
Net Income from Liquids before Income Tax	.49	.51
Less: Federal Income Tax @ 52%	.25	.27
Net Income if gas is purchased and sold at the same price	.24	.24
Net Investment in Facilities at December 31, 1951	$15,557,556.28	$4,210,887.57
Return on Investment	1.90%	2.23%
Gas Produced and Purchased at the Wellhead M. C. F. @ 14.65#	123,399,016	38,586,740

[fols. 917-918]

EXHIBIT 40

Before the Corporation Commission of the State of Oklahoma

In re: In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an Order Determining the Minimum Price at which Gas Produced from the Guymon-Hugoton Field May Be First Purchased or Sold. — Cause CD 3028

EXHIBIT 40

Phillips Petroleum Company

System	Gross Investment Dec. 31, 1951	Reserves for Depreciation Dec. 31, 1951	Net Investment Dec. 31, 1951
Sherman:			
Gathering	$13,254,611.69	$1,034,872.92	$12,219,738.77
Processing	3,654,728.74	352,214.53	3,302,514.21
Residue Delivery	35,608.48	305.18	35,303.30
Total Sherman	16,944,948.91	1,387,392.63	15,557,556.28
Hansford:			
Gathering	$ 2,945,749.24	$ 494,705.22	$ 2,451,044.02
Processing	2,007,532.92	289,683.43	1,717,849.49
Residue Delivery	51,107.95	9,113.89	41,994.06
Total Hansford	5,004,390.11	793,502.54	4,210,887.57

[fol. 919]

EXHIBIT 42

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3048

Order No. 24745

IN THE MATTER OF THE APPLICATION OF PANOMA CORPORATION for a Clarification of Order No. 19514, and for an Order of this Commission directing the action to be taken by applicant and Natural Gas Pipeline Company of America under and pursuant to said Orders.

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, on the application of

Panoma Corporation for an order interpreting and enforcing Order No. 19514, issued by this Commission, at which time Natural Gas Pipeline Company of America requested that said cause be continued and the cause was then continued for hearing to the 5th day of April, 1951.

On the 5th day of April, 1951, said cause was again called for hearing on the application filed herein by Panoma Corporation and the response thereto filed by Natural Gas [fol. 920] Pipeline Company of America. The applicant was represented by T. Murray Robinson, Wallace E. Robertson, Kent W. Shartel and Richard W. Fowler, its attorneys, and the respondent, Natural Gas Pipeline Company of America was represented by its attorneys, S. A. L. Moran, Warren Spies, D. H. Culton and Monnet, Hayes, Brown and Bullis, by Coleman Hayes; the Commission was represented by Floyd Green, Conservation Attorney, and no other persons appeared. All appearing parties announced ready for trial, and the applicant and respondent presented their evidence and said cause was heard throughout the day of April 5, 1951, and continued for further hearing to April 6, 1951, and on the 6th day of April, 1951, the parties appearing as before, the Commission heard the arguments of counsel and both parties rested, and the Commission closed the case and took the matter under advisement, authorizing counsel to file briefs in support of their respective positions.

Now, on this 17th day of May, 1951, the Commission having considered the matter in conference, and each of the Commissioners being fully advised as to the entire record and having considered all evidence introduced, the arguments of the parties, and the briefs filed, and being well and sufficiently advised, is of the opinion that the [fol. 921] Commission should act on the application to the following extent, and the Commission finds as follows:

Findings

1. That notice by publication of the filing of the application and the time and place of hearing thereon and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in the application

and of the parties interested therein, and has jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That, pursuant to a contract dated December 1, 1946, Harrington & Marsh the Predecessors of Panoma Corporation, during August of 1948, commenced the delivery of natural gas from wells owned by them in the Guymon-Hugoton field in Texas County, Oklahoma, to Natural Gas Pipeline Company of America, and thereafter such deliveries were continued by Panoma Corporation as purchaser and successor to all of the properties, rights and obliga-[fol. 922] tions of Harrington and Marsh; that the parties hereto have agreed that all determinations by this Commission may be made as if said deliveries had at all times been made by Panoma Corporation.

3. That said gas was delivered, but not metered or measured, at a compressor station owned and operated by Natural Gas Pipeline Company of America and located in Texas County, Oklahoma; that the amount of gas so delivered could be and may at all times be computed although it is not there metered.

4. That the provisions of order No. 19514 became effective as of January 1, 1947 and after said date no gas produced therefrom could legally be sold or purchased in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price of less than seven cents (7¢) per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute pressure per square inch and does and did prohibit sales and purchases for any lesser amount.

[fol. 923] 5. That uncertainty as to the finality of this Corporation's Order No. 19514 created by the appeal therefrom to the Supreme Court of the State of Oklahoma, and the Supreme Court of the United States justified applicant in continuing the delivery of gas, without receiving payment, concurrent with the delivery, at the minimum price fixed by this Commission, until the time said order was affirmed by the Supreme Court and the mandate of affirmance filed with this Commission; this Commission had no knowledge of the acts of the parties, which the Commission now finds were in violation of its order, until this proceeding was filed.

6. That deliveries or acceptance of gas in Oklahoma,

produced from the Guymon-Hugoton field in Oklahoma, that are not in compliance with Order No. 19514, are prohibited by said Order and the deliveries of Panoma Corporation and receipt or acceptance by Natural Gas Pipeline Company of America are not in compliance with said order and are in violation thereof and should be stopped.

7. That the amount which the Natural Gas Pipeline Company was obligated to pay, and should have paid to comply with this Commission's Order, was seven cents (7¢) for each thousand cubic feet of gas, measured at an absolute pressure base of 14.65 pounds per square inch, which the Panoma Corporation delivered to the Natural Gas Pipeline Company of America at its compressor station and such respondent has not paid such amount and has refused [fol. 924] to pay such amount although requested to do so.

8. That the stipulated amount of gas so delivered by Panoma Corporation to Natural Gas Pipe Line Company of America at said compressor station to the first day of January, 1951, was 70,992,632 thousand cubic feet, and that is the amount, so far as it can be determined, which was produced at the wellhead.

9. That a reasonable time hereafter, in which to comply with said order is twenty (20) days, and Natural Gas Pipeline of America should, within 20 days from the date of this order, pay Panoma Corporation the difference between the amount it has heretofore paid for such gas delivered to it by Panoma and the amount which it should have paid for the gas as herein determined; computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute, and unless Natural Gas Pipeline Company of America makes such payment in compliance with said order during the period and in the manner provided herein, Panoma Corporation should be directed to thereupon stop delivering gas to Natural Gas Pipeline Company of America and to file with this Commission an application for a share in the available markets that are complying with the orders of this Commission.

[fol. 925] 10. The Commission further finds that Order No. 19702, entered upon the application of Phillips Petroleum Company, was not entered as a fieldwide order, but

was entered as affecting a part thereof only and on the application of an owner of a portion of the wells in the field, and was based on facts presented to the Commission in support of the special relief or exception which the applicant in that case had requested; that therein the Commission specifically found that applicant "did not see fit to introduce any evidence as to profit or losses from the production of natural gas from the Guymon-Hugoton Field"; that this Commission does not feel it is bound herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19702; however, since respondent's contention that such order is in conflict with the findings and judgment of the Commission herein, this Commission deems it appropriate to now find that when it entered its Order No. 19514 determining;

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch",

that it applied to all producers, purchasers and takers of gas from said field, and that no sales or purchases of natural gas would be thereafter permitted in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute [fol. 926] per square inch; that the minimum price thus established would govern at the wellhead and at any other point in said Guymon-Hugoton field at which said gas would thereafter be delivered by a producer to a purchaser, so that the owners of the gas within said reservoir, being the lessees and the lessors, and other persons owning an interest in the gas in place, should at all times from and after the issuance of said order, receive from the delivery of their gas, as owners and producers thereof, not less than the minimum price fixed by the Commission.

11. That Order No. 19514 should be strictly enforced for the prevention of waste, the prevention of which is the basic purpose of said order and Natural Gas Pipeline Com-

pany of America should not be permitted to plead its contract in avoidance thereof; and the contracts of the parties, neither by direction, implication nor complication can defeat the effect of the order of this commission and to hold otherwise would cause and permit waste, and to adopt or accept the contentions of respondents would cause and invite discrimination and general breakdown of the regulations preventing waste and protecting the correlative rights of the parties.

12. That to protect the correlative rights of the parties and to prevent waste, this order should be issued.

[fol. 927] Order

It is therefore Ordered by the Corporation Commission of Oklahoma as follows:

1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with Order No. 19514, by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base 16.5 pounds per square inch absolute pressure, and it is directed to desist from so doing and is directed to comply with said order.

3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per

[fol. 928] square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America.

Done and Performed by the Corporation Commission of Oklahoma at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 17th day of May, 1951.

Corporation Commission of Oklahoma, Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: Tom McMurray, Secretary.

[fol. 929] EXHIBIT 43

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054

Order No. 19702

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs

CITIES SERVICE GAS COMPANY, A CORPORATION AND ALL Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, Respondents.

THE SCHOOL LAND COMMISSION OF THE STATE OF OKLAHOMA and Texas County Land & Royalty Owners Association, Interveners.

Report of the Commission

This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of January, 1947, at 1:30 o'clock, p. m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner, sitting. Ray M.

Williams, Attorney of Bartlesville and Harry Turner, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent Peerless Oil & Gas Company, and Floyd Green, Conservation Attorney, appeared for the Commission.

After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 o'clock, P. M., for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral argument and being well and sufficiently ad-[fol. 930]vised in the premises, the Commission denied the application and therefore finds as follows:

Findings

1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbers 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

2. That this Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that protests have been filed to the granting of the order.

3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbers 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and transports the gas produced from its lesses in Texas County, across the Oklahoma line to a gasoline plant located in [fol. 931] Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of

one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent or approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or leases from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein al-[fol. 932] leged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

5. That applicants complain that paragraph 1 of Order No. 19514 and paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders

Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the [fol. 933] pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with orders Nos. 19514 and 19515.

6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform price for the field, is permitting dis- [fol. 934] crimination in price which adversely affects many producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses of one of Oklahoma's most valuable resources.

7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

8. That this application should be denied in the interest of preventing: (a)—economic waste of a great natural resource to wit: natural gas, (b)—actual physical waste of natural gas in the Hugoton Field, (c)—loss to the producers and royalty owners in said field, (d)—loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School

Land Commission, (e)—the inequitable taking of natural gas from the common source of supply owned by all; (f)—discrimination as to prices paid throughout the field which discrimination adversely affects many royalty owners and producers, (g)—the inefficient and wasteful utilization of [fol. 935] natural gas.

9. That this application should be denied.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbers 19514 and 19515, heretofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

Done and performed this the 4th day of February, 1947.

Corporation Commission of Oklahoma, Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, ———, Commissioner.

Attest: Tom McMurray, Secretary.

(Seal)

[fol. 936] EXHIBIT 44

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054

Order No. 19514

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, A CORPORATION AND ALL Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, Respondents.

THE SCHOOL LAND COMMISSION OF THE STATE OF OKLAHOMA and Texas County Land & Royalty Owners Association, Interveners.

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10:00 o'clock a. m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Pruet, its attorney, the respondent Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas [fol. 937] County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having an-

nounced ready for trial, the applicant and interveners presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

Findings

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

[fol. 938] 2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probably productive area of the Guymon-Hugoton pool in Texas County, Okla-

homa, covers part of the following described townships, to-wit:

Townships:		Ranges:
1	North	12 to 17 E. C. M.
1, 2, 3, and 4	North	12 to 18 E. C. M.

and

5 and 6	North	12 to 19 E. C. M.

which area may be extended by the drilling of additional wells.

[fol. 939] 5. Peerless Oil and Gas Company is the owner of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of supply aforesaid, which oil and gas leases include leases covering

Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma,

and

Section 5, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

in which the two wells of Peerless Oil and Gas Company, referred to in applican-'s petition, have been drilled.

6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

[fol. 940] 9. The production of natural gas in the Guymon-Hugoton field is in excess of the market demand.

10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton Oklahoma gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells or for the purpose of its own domestic use.

[fol. 941] 15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

16. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton Oklahoma gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

17. That Cities Service Gas Company, respondent herein; qualified to do business in the State of Oklahoma on the 19th of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

18. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of Oklahoma Natural Gas Company vs. State, 161 Okla. 104, 17 page (2) 488, which decision required to table taking of gas under and by virtue of an order similar to that sought in the instant case.

19. That the operation of the responednt, Cities Service Gas Company, constitute it a transporter of natural gas.

[fol. 942] 20. A bona fide dispute has arisen between the applicant, Peerless Oil and Gas Company, a corporation, and respondent Cities Service Gas Company, as to the price, measurement and term of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Sections 5 and 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Section 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon Hugoton pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when peerless oil and Gas Company, applicant herein, and Cities

[fol. 943] Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic feet delivered into the pipelines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma; all as evidenced by a stipulation on file herein.

23. The persons and corporations operating pipelines and transporting natural gas out of the Guymon Hugoton Oklahoma gas field own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guy- [fol. 944] mon Hugoton Oklahoma gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

24. There is no competitive market of natural gas in the Guymon Hugoton Oklahoma oil field, but said market has been stifled by reason of the control of acreage and markets by the pipeline operators in said field, and as a result natural gas is being taken out of the Guymon Hugoton Oklahoma Gas field at a price far less than its actual or fair market value, and at a price which is far less than the

value of natural gas for heating and other purposes as compared to the value of other fuels.

25. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon Hugoton Field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton Oklahoma field and out of the State of Oklahoma at a price which is far less than its replacement value.

26. Various purchasers of natural gas, in the Guymon Hugoton Field, purchase natural gas from different producers and contracts providing for different prices, terms and conditions.

27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton Oklahoma gas field under contracts containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract [fol. 945] with Hagy, Harrington and Marsh.

28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

29. The operations of respondent, Cities Service Gas Company, constitute it a common carrier.

30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

32. The taking of natural gas from the Guymon Hugoton Oklahoma field at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, towit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes.

(e) Inequitable taking of natural gas from the common source of supply involved.

(f) Discrimination against various producers in the field.

[fol. 946] 33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent, Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon Hugoton field.

34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon Hugoton field, at a price less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

[fols. 947-973] Order

It is therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That no natural gas shall be taken out of the producing structures or formations in the Guymon Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

2. This order shall be effective as of January 1st, 1947.

Done and Performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman, Ray O. Weems, Vice Chairman, Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary.

[fol. 974] EXHIBIT No. 46

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL Owners in Texas County, Oklahoma, for An Order Determining the Minimum Price at Which Gas Produced from the Guymon-Hugoton Field May Be First Purchased or Sold.

RESPONSE OF PANHANDLE EASTERN PIPE LINE COMPANY

Comes now Panhandle Eastern Pipe Line Company, a Delaware Corporation, hereinafter referred to as Panhandle, and shows that it is a natural-gas company within the meaning of the Natural Gas Act of 1938, as amended; that it owns and operates, under Certificates of Convenience and Necessity, a natural gas pipeline system extending from a point in the Panhandle of Texas into and through the States of Oklahoma, Kansas, Missouri, Illinois, Indiana, and Ohio, and having its terminus in Michigan; that it engages in the transportation and sale of natural gas in interstate commerce (a) for resale for domestic, commercial, industrial and other uses, and (b) directly to customers for their own use; that it is a producer of natural gas in the Guymon-Hugoton Field in Texas County, [fol. 975] Oklahoma, and also is a purchaser in Hansford County, Texas, under an existing contract, of residue gas, one of the constituents of natural gas, which is produced in the Texas County, Oklahoma, area of the Guymon-Hugoton Field, but which is transported interstate into the State of Texas for sale and delivery to Panhandle in that State.

Panhandle objects to and protests the entry of any order herein which would increase the minimum wellhead price of natural gas produced in the Guymon-Hugoton Field.

Panhandle further objects to and protests the entry of any order which would have the effect of fixing the same minimum price for residue gas sold and delivered outside the State of Oklahoma, as that fixed for gas in its natural state at the wellhead.

Panhandle respectfully shows that any such order as that mentioned above, which would effectuate the result therein set out, would be beyond and outside any statutory or constitutional jurisdiction or authority granted to the Commission and would be discriminatory, arbitrary and void, and violative of Sections 7 and 15 of Article 2 of the Constitution of Oklahoma and the Fourteenth Amendment to the Constitution of the United States, and would likewise impose a discriminatory burden and place an embargo upon interstate commerce, contrary to the provisions of [fol. 976] Section 8 of Article 1 of the Constitution of the United States, and would also be violative of the provisions of Section 10 of Article 1 of the Constitution of the United States, inasmuch as the same prohibits the impairment of contracts, and would also be violative of the Federal Natural Gas Act.

(S.) Ed. H. Lange, Rizley, Tryon & Sweet, Attorneys for Panhandle Eastern Pipe Line Company.

[fol. 977] EXHIBIT No. 47

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL Owners in Texas County, Oklahoma, for An Order Determining the Minimum Price at Which Gas Produced from the Guymon-Hugoton Field May Be First Purchased or Sold.

Stipulation

The following facts are stipulated by the undersigned and may be received and accepted in evidence by Commission to the same extent as if testified to by qualified witsesses, with the privilege granted to any adverse party to show any errors therein.

1. Cities Service Gas Company is a Delaware corporation duly authorized to transact business in the State of

Oklahoma as a foreign corporation. It is a natural gas company as defined by the Natural Gas Act, as amended, (15 U. S. C. A. 717) and engaged generally in the business of producing and purchasing natural gas for transportation and sale in interstate commerce for resale under the provisions of the Natural Gas Act by means of an integrated pipeline system and facilities extending from Texas into and through Oklahoma and Kansas and into Missouri and Nebraska. Attached hereto and made a part hereof, marked Exhibit "A", is a map of the complete integrated [fol. 978] pipeline system of Cities Service Gas Company as it currently exists.

2. In operating its said integrated pipeline system and facilities evidenced by said Exhibit "A" and as an integral part thereof, Cities Service Gas Company has entered into several written contracts for the purchase of natural gas as it is produced in its natural state in the Guymon-Hugoton Field in Texas County, Oklahoma. The purpose of such contracts is to augment its supply of company produced gas in the Guymon-Hugoton Field in order to enable it to adequately, efficientiy and properly supply through its integrated pipeline system its markets in Oklahoma and other states as disclosed by said Exhibit "A". The stream of gas from the point of purchase and delivery flows continuously, without interruption, from the point of purchase and delivery to the markets of Cities Service Gas Company in Oklahoma and outside of Oklahoma as disclosed on said Exhibit "A". In 1951, Cities Service Gas Company produced from its own leases and acreage in said Guymon-Hugoton Field 19,124,601 Mcf of Natural gas measured on a 14.65 pound pressure base. It purchased under its gas purchase contracts in 1951 from producers in said Guymon-Hugoton Field an aggregate amount of 38,216,799 Mcf of natural gas in its natural state measured on a 14.65 pound pressure base. Of the amount so purchased, 38,-[fol. 979] 032,643 Mcf was purchased, after production and gathering by producer, delivered to the pipe line of Cities Service Gas Company in said Guymon-Hugoton Field, the title thereto passing at the point of delivery, and 174,156 Mcf was purchased delivered at the wellhead in said field, the title thereto passing at the wellhead. It is

estimated by Cities Service Gas Company that its volumes of purchased gas from said Guymon-Hugoton Field in 1952 will be substantially the same as the purchase and delivery as outlined herein for the year 1951. In 1951, 56,030,332 Mcf or 85.21% of the natural gas produced and purchased by Cities Service Gas Company in said Guymon-Hugoton Field was transported and sold to its interstate markets and 9,724,314 Mcf or 14.79% of the natural gas produced and purchased by Cities Service Gas Company in said Guymon-Hugoton Field was sold to its Oklahoma markets. It is estimated by Cities Service Gas Company that the volume and percentage of natural gas that will be produced and purchased by it in the Guymon-Hugoton Field for the year 1952 for its markets outside the State of Oklahoma and in the State of Oklahoma will be substantially the same as outlined herein for the year 1951.

3. Since January 1, 1947, the effective date of Order 19514 of the Corporation Commission of Oklahoma fixing [fols. 980-982] the minimum price at the wellhead for gas produced in said Guymon-Hugoton Field, Cities Service Gas Company has as a result of contract negotiation increased its price for purchased gas in said Guymon-Hugoton Field, related to the wellhead, to 8.4864¢ per Mcf and royalty gas to 8.9329¢ per Mcf measured on a pressure base of 14.65 pounds and is currently paying such price. The weighted average price currently being paid in the Guymon-Hugoton Field, related to the wellhead, is *7.880043¢* per Mcf measured on a pressure base of 14.65 pounds.

Cities Service Gas Company reserves the right, notwithstanding this stipulation, to introduce and present to Commission any other competent facts or evidence it may deem material prior to the closing of the hearing by Commission in the captioned proceeding.

Dated this 9th day of July, 1952.

(S.) T. Murray Robinson, Attorney for Applicants, O. R. Stites, Joe Rolston, Attorneys for Respondents, Cities Service Gas Company.

Approved: (S.) Floyd Green, Attorney for Corporation Commission.

[fol. 983] EXHIBIT No. 48

Gas Purchase Contract

This Gas Purchase Contract made as of December 1, 1946, by and between Natural Gas Pipeline Company of America, a Delaware corporation having offices at 20 North Wacker Drive, Chicago 6, Illinois, herein called "Natural", and D. D. Harrington, Stanley Marsh, Jr., Estelle Fariss Marsh, T. J. Wagner, Jr., Ida D. Marsh, and Isabel Marsh McCormick, joined by her husband, Jas. L. McCormick, and joined herein by Stanley Marsh, Jr., Independent Executor of the Estate of Stanley Marsh, deceased, both jointly and severally, said parties comprising the partnership doing business under the firm name of Harrington & Marsh, all residents of Amarillo, Texas, all or any of whom may be addressed at Amarillo Building, Amarillo, Texas, herein called "Sellers",

Witnesseth

That in consideration of the mutual covenants hereof, the parties agree as follows, to-wit:

Article First

Situation and Purpose of Parties

1. Natural is the owner of a natural gas transportation system originating near Gray, Oklahoma, and terminating near Joliet, Illinois, with a trunk lateral line traversing northern Illinois. By means of said system it transports natural gas and sells and delivers the same for consumption in the great Chicago metropolitan area and other localities, and may make deliveries for consumption in additional areas. Its system is integrated with a natural gas transportation system owned by Texoma Natural Gas Company, herein called "Texoma", which system originates in the Panhandle gas field of Texas and connects with the origin of Natural's pipeline system. Natural receives from Texoma's transportation system all gas presently transported and sold by it. Natural and Texoma are now engaged, under authorization from Federal Power Commission heretofore issued to them, in enlarging their

respective transportation systems so that the integrated system will require on days of operation at maximum capacity an intake of approximately three hundred forty million (340,000,000) cubic feet of gas per day, measured as in Article Twelfth provided. Natural and Texoma have made application to the Federal Power Commission for a certificate of convenience and necessity permitting them to additionally enlarge such integrated system, so that same will require an intake of approximately four hundred seventy million (470,000,000) cubic feet of gas per day; and intend, if permitted by certificate satisfactory to them obtained, to construct additional facilities to obtain such additional enlargement of such integrated system. The construction of such additional facilities is herein referred to as the "proposed expansion". Natural desires to obtain from Sellers that proportion of its total system requirements of gas specified in Article Third hereof. The proposed expansion contemplates, among other things, the construction of a pipeline connecting Natural's pipeline system at its present Station 2 near Gray, Oklahoma, with the gas reserves of Sellers hereinafter referred to, and the installation at or near the intake terminal of said pipeline of a compressor station and appurtenances, herein referred to as "Station 1", for the compression of gas to be received from Sellers; all of such facilities adequate [fol. 984] for handling seventy-six million (76,000,000) cubic feet of gas per day.

2. Sellers represent that they own leasehold estates, mineral interests, lands, gas purchase contracts or other property rights covering in excess of seventy-eight thousand (78,000) acres of land in Texas County, Oklahoma, and in what is referred to by the Oklahoma Corporation Commission as the Guymon-Hugoton field, which vest in them the right to produce gas from such lands upon satisfaction of the covenants of such grants, as long as gas may be produced therefrom. Such rights, the lands covered thereby, and/or the gas deposits underlying said lands, as the sense may best indicate, are herein referred to as "gas reserves". A detailed description of the instruments creating such gas reserves and the lands covered thereby is attached hereto and marked "Exhibit A". A map showing the location of

the gas reserves in relation to the sections and townships in Texas County, Oklahoma, is attached hereto and marked "Exhibit B". Sellers desire to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells to said Station 1, and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract. They desire, and will undertake, to remove certain constituents of the gas to be delivered, after its compression by Natural at Station 1, and for that purpose intend to construct a gasoline plant and dehydration plant on the pipeline to be constructed by Natural, on the discharge side of said Station 1.

Article Second

Initial Activities

1. Natural and Texoma have made application to the Federal Power Commission for the proposed expansion, and Natural agrees to prosecute and to cause Texoma to prosecute said application with due diligence. Should they be unable to secure such certificate or be able to obtain it only with conditions not acceptable to them on or before June 1, 1947, Natural shall promptly notify Sellers, and this contract shall then terminate.

2. Sellers shall, within thirty (30) days after Natural's prompt request, exhibit to Natural such evidence of their title to their gas reserves as shall in the opinion of counsel for Natural show that they are the lawful owners thereof and of the rights therein herein described, and are in a position to dedicate such reserves to the use of this contract. Should, in the opinion of Natural's counsel, Sellers fail to exhibit such title to substantially all of the gas reserves described, Natural may at its option terminate this contract.

3. If and when Natural and Texoma shall have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion within the above specified time limit, on terms satisfactory to them,

Natural shall proceed and shall cause Texoma to proceed with due diligence, the availability of materials and other uncertain factors considered, to complete the proposed expansion, and as part thereof shall complete its Station 1, and a pipeline therefrom to its Station 2. Said station shall be located within 1 mile from the center of Section 7, Township 4 North, Range 17 East, in Texas County, Oklahoma unless the parties mutually agree otherwise. Natural [fol. 985] shall so arrange its pipeline facilities that the gas may, after compression at said station, be delivered to the gasoline and dehydration plants of Sellers in Article Fifth hereof specified, and then passed through a metering station in Article Twelfth described, which metering station shall be located on the discharge side of said plants.

4. It is contemplated that some of the increment in capacity to be obtained by the proposed expansion may be available before the entire construction is completed. Upon the granting and acceptance of a certificate of public convenience and necessity upon the application above referred to, Natural shall notify Sellers thereof of the probable date of initial delivery hereunder, and at the same time shall advise them of its best estimate of the quantity of gas which it desires to then have available for delivery hereunder. Sellers shall proceed with due diligence to drill gas wells, install gathering lines, construct the gasoline and dehydration plants herein described, provide all other facilities, and do all other things and acts necessary to make available for delivery hereunder at such date of initial delivery the quantities of gas so estimated, the availability of materials and all physical and legal restrictions on production considered. As the work on the proposed expansion continues, Natural shall from time to time notify Sellers of its estimates of any additional quantities of gas required to be available hereunder, in each case at the end of one year from the date of the notice, and Sellers shall thereupon install such additional facilities and do all acts and things as may be necessary to increase the deliveries at the end of the named period by the quantity so estimated; all within the maximum daily quantity required by this contract.

Article Third

Quantities of Gas to be Delivered

1. Sellers agree to sell and deliver to Natural and Natural agrees to purchase and receive from Sellers, subject to the limitations herein expressed, such quantities of gas as shall average daily, as nearly as is practicable in good operation seventy-six million (76,000,000) cubic feet per day and, in addition, any quantities of gas used for compressor station operation as provided in Article Fourth hereof. The obligation of Natural to purchase and Sellers to deliver such quantities of gas shall commence not later than eighteen months after Natural and Texoma have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion, on terms satisfactory to them, provided materials for such expansion are available to enable them to complete such construction within the eighteen months period; otherwise, as soon as the availability of materials shall permit the completion of the proposed expansion. Any variations in deliveries from said daily quantity shall be adjusted by Buyer currently and as soon as practicable. Prior to the completion of the proposed expansion, the quantities to be delivered hereunder shall be limited to the quantities which Natural may desire to take within the quantities stated in the notices provided by Article Second, Paragraph 4, hereof.

2. The obligation of Sellers to deliver Natural such quantities hereunder shall be limited to the quantity of gas which can be legally produced from the gas reserves less the quantity of gas excepted and reserved hereunder for the development and operation of Sellers' leaseholds and plants. Should any law or any rule or regulation of any state or Federal authority having jurisdiction require [fol. 986] Natural to purchase a portion of such quantities from other than Sellers in said Guymon-Hugoton field, or shall make it necessary for Natural to do so in order to obtain such quantities, the quantity of gas otherwise to be delivered by Sellers hereunder shall be reduced by the quantity of gas Natural is so required to purchase during

the time that Natural is so required. Natural may obey any such law, rule or regulation without legal contest.

Article Fourth

Delivery and Pressure

Sellers shall deliver gas hereunder into the custody of Natural and Natural shall first receive the custody of same, at the intake side of its Station 1, at a gauge pressure of not less than 150 pounds per square inch. The gas shall be compressed at said station by Natural according to the operating practice which it may from time to time follow, but not in excess of a gauge pressure of 800 pounds per square inch. Natural shall, after compression, then re-deliver said gas to Sellers' gasoline plant at an average daily temperature not in excess of 95° F. and shall use all reasonable effort to keep such gas free from compressor lubricating oil. Sellers shall be entitled to all hydrocarbons removed from the gas by such compression provided the collecting thereof be at their sole cost and risk. Sellers shall, after treatment at their gasoline and dehydration plants, re-deliver the gas into Natural's pipeline at the outlet of said plants at a temperature within 5° F. of a temperature at which the gas is received by Sellers at the inlet of said plants, provided Sellers shall not be required to reduce the temperature of such gas below 70° F. A metering station to be installed and operated by Natural as provided in Article Twelfth hereof shall be located near the outlet of said plants at which point title to the gas shall pass to Natural; except, the gas required by Natural for its compressor station operation shall be metered separately at a point at or near said station and title thereto shall pass to Natural as used. Such gas so used for compressor station operation by Natural shall be assumed and agreed for purposes of measurement and payment hereunder to have a flowing temperature in the meter of 60° F. and a total heating value of nine hundred sixty-five (965) British thermal units per cubic foot.

Article Fifth

Gasoline Plant Operation

1. Sellers reserve the right, subject to the limitations in this Article specified, to extract from the gas to be delivered hereunder nitrogen, helium, and also natural gasoline, butane, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents; and Sellers shall remove certain constituents from the gas; all as hereinafter provided.

2. Sellers shall, prior to the first delivery of gas hereunder, construct at a proper location approximately one mile from Station 1 an absorption type gasoline plant and a dehydration plant for the recovery of constituents to be removed from the gas delivered hereunder, which plants shall be adequate for the treatment of seventy-six million (76,000,000) cubic feet of gas per day. Sellers shall at all times maintain said plants in good repair and operating efficiency, and shall restore the same or any part thereof which may be destroyed or otherwise become inefficient.

[fol. 987] 3. In the operation of said gasoline and dehydration plants, Sellers shall:

(a) Reduce the pressure of the gas between the inlet and the outlet of the plants by no more than is necessary for their efficient operation, and in no case more than fifteen (15) pounds per square inch.

(b) Conform their operations to the requirements of the efficient compression and transportation by Natural of gas delivered hereunder, to the full extent same may be accomplished without undue burden on the operation of said plants.

(c) Remove from the gas treated all hydrocarbons and water necessary to produce a dew point of the treated gas which shall not exceed a temperature of twenty-five (25) degrees Fahrenheit at a gauge pressure of not more than seven hundred eighty-five (785) pounds per square inch, in order that the formation of hydrates and/or the condensation of hydrocarbons will not occur in Natural's pipeline system.

(d) Refrain from permanently removing hydrocarbons from the gas to the extent that their removal may reduce the heating value of the gas below nine hundred fifty (950) British thermal units per cubic foot.

4. The parties agree that the proper operation of said gasoline and dehydration plants is essential to the preparation of the gas for its efficient transportation. Should Sellers fail to operate said gasoline and dehydration plants in the manner herein required, Natural may, as often as such default may occur, enter upon the premises where said plants are located, take possession of said premises, plants and all appurtenances, place and maintain the same in adequate repair and operating condition, install any equipment or additions thereto required for efficient operation, and thereafter operate the same, all according to its own judgment and discretion. In such event it may market or otherwise dispose of all products recovered as if the owner thereof according to its discretion, but shall account to Sellers for the receipts thereof, if any. Sellers shall on demand pay Natural all expenses in Natural's judgment reasonably applicable to such activities, and in addition a supervising charge of ten per cent (10%) above all such expenditures, together with interest at the rate of six per cent (6%) per annum on all amounts not paid when due; and such charges against Sellers shall be a lien on such plants, their appurtenances, and the real estate where located, and the proceeds, if any, received by Natural for the products produced, and shall be deductible against any sums payable for gas delivered hereunder. Natural may continue such operation until it has received assurance from Sellers satisfactory to it that the said plants will thereafter be operated as herein provided.

Article Sixth

Price and Payment

1. For all gas delivered hereunder Natural shall pay to Sellers an amount calculated on the following prices per

one thousand (1000) cubic feet, metered as in Article Twelfth herein provided; that is:

(a) Until the first day of July, 1951, six cents (6¢),

(b) During the five-year period commencing July 1, 1951, seven cents (7¢),

(c) Commencing July 1, 1956, and for the remaining term of this contract, eight cents (8¢).

2. During any day when the gas delivered contains on the average nine hundred sixty (960) British thermal units, or more, per cubic foot, measured as in Article Eleventh provided, the price determined as in Paragraph 1 of this Article shall be increased or decreased in direct proportion as such British thermal unit content varies [fol. 988] from nine hundred sixty-five (965) units per cubic foot; during any day when the gas delivered contains on the average less than nine hundred sixty (960) and more than nine hundred fifty (950) British thermal units per cubic foot, such price shall be reduced by ten per cent (10%); during any day when the gas delivered contains on the average nine hundred fifty (950), or less, British thermal units per cubic foot, and is accepted by Natural, such price shall be reduced by twenty per cent (20%).

3. Sellers shall pay all ad valorem taxes on their gas reserves and properties and all present gross production taxes, severance taxes and other excise taxes upon or in respect to the gas delivered hereunder up to the point of delivery of the gas to Natural. All increases in taxes due to increases in the rates of such present gross production taxes, severance taxes, and excise taxes upon or in respect of the gas delivered hereunder or the production, transportation or handling thereof up to the point of delivery of the gas to Natural shall be borne one-half by Sellers and one-half by Natural; provided, that all excise taxes upon or in respect of the manufacture or recovery of hydrocarbons by Sellers shall be borne by Sellers.

4. Natural shall render to Sellers on or before the tenth day of each month a statement showing the total quantity of gas received into the integrated pipeline system of Natural and Texoma and the quantities of gas delivered hereunder by Sellers on each day during the calendar

month next preceding, the average British thermal unit content of the gas delivered by Sellers each day of such calendar month, and shall accompany such statement with the applicable charts and such other data obtained or used by Natural for the preparation of such statement. Sellers shall within five (5) days after receipt of such statement render to Natural an invoice for the gas delivered hereunder during such calendar month and shall at the same time return to Natural all charts and data delivered to them with Natural's statement. Natural shall pay Sellers for the gas delivered during such calendar month within ten (10) days after receipt of invoice; and upon failure so to do, interest thereon shall accrue at the rate of six per cent (6%) per annum. If Natural should fail to pay any amount due hereunder, to the extent same is not in bona fide dispute, for a period of sixty (60) days after its due date, Sellers may suspend deliveries of gas hereunder until such payment is made. Any statement or invoice shall be subject to correction within one (1) year after payment made by Natural for gas delivered during any calendar month, but if claim for correction is not made within that time, such statement and invoice shall become final as to both parties.

5. Natural may at its option make payment of any sum/s due hereunder by depositing same in the First National Bank and Trust Company of Oklahoma City, Oklahoma, to the credit of Harrington & Marsh and such deposit/s shall fully acquit Natural, irrespective of ownership or any change in ownership, of the rights hereunder of Sellers or any of them; provided, however, Sellers may on authorization in manner and form acceptable to Natural direct such payment/s to be made otherwise.

Article Seventh

Obligation of Sellers to Develop Gas Reserves and Provide Facilities for Delivery

Sellers agree that pursuant to the notices outlined in Article Second hereof, and thereafter during the continuance of this contract, they will, to the full extent required by prudent operation diligently develop the gas reserves,

[fol. 989] drill gas wells thereon, install necessary gathering systems, booster stations, equipment, property and appurtenances for the gathering and delivery of gas, from time to time acidize or otherwise treat their gas wells to the extent necessary to obtain the fullest possible production therefrom, if necessary provide facilities to condition the gas produced to meet the requirements of this contract, continuously maintain their gas wells, pipelines, and all their property in good operating condition and operate the same with due diligence; all to the extent necessary to maintain at all times sufficient open flow in such wells and adequate capacity in pipelines, gasoline and dehydration plants and other properties so that Sellers will be able to deliver to Natural from said gas reserves according to the provisions of this contract, the availability of materials and all physical or legal restraints on production and sale considered, seventy-six million (76,000,000) cubic feet of gas per day; except that pending completion of the proposed expansion Sellers shall be required to maintain available for delivery no greater quantities of gas than those specified in notices given pursuant to paragraph 4 of Article Second hereof.

Article Eighth

Remedy for Failure to Make Deliveries

1. "Day" shall be taken to mean the twenty-four (24) hour period commencing at eight o'clock A. M., Central Standard Time.

2. Should Sellers from causes not excused by the provisions of Article Fifteenth hereof or attributable to the inability of Natural to receive Sellers' deliveries, fail on as many as seven (7) days (which need not be consecutive) during any thirty (30) day period to deliver the quantities of gas required to be delivered by it under the provisions of Article Third hereof, Natural may, as often as such situation occurs and without waiver from prior indulgence and without prejudice to other remedy, at its option to be exercised within ninety (90) days after such occurrence, give notice to Sellers that it elects to reduce during the remaining term of this contract the quantity otherwise required to be delivered by a stated quantity per day,

which shall not be more than the maximum quantity of the deficiency occurring during any twenty-four (24) hour period, and thereafter the quantities otherwise to be delivered hereunder shall be reduced by such quantity per day. Provided, however, should Sellers be prevented from delivering the quantities of gas required to be delivered hereunder by reason of any law in the nature of a proration or common purchaser law, or any regulation thereunder, such reduction of the quantities otherwise to be delivered hereunder by a stated quantity per day shall not exceed the daily average deficiency during said thirty (30) day period.

Article Ninth

Gas Reserves

1. Sellers agree that during the term of this contract they will do and perform all acts and things within reason which are necessary to continue in force, renew and maintain their ownership of the gas reserves and their exclusive right to produce gas therefrom. Provided that Sellers may abandon any gas leaseholds or other estates or rights covering portions of the gas reserves, where the land covered thereby in their judgment has been condemned by development, and may abandon any producing leasehold which may no longer be operated at a profit; conditions, however, that Sellers shall first in writing offer, at least [fol. 990] ninety (90) days prior to any such abandonment, to sell, convey and assign to Natural the gas rights held by them in and to the lands, together with any gas wells and appurtenant equipment thereon, the gas rights to which are proposed to be abandoned, at the salvage value of such gas wells and appurtenant equipment, if any, in place. Should Natural elect to accept said offer within thirty (30) days after receiving same, such property shall be transferred to Natural accordingly.

2. Sellers shall, for the purpose of consolidating the gas reserves into better operating position, have the right to exchange portions of the present gas reserves for other acreage of like area and productive quality situated within the area outlined and designated "Approved Area" on the map attached hereto and marked Exhibit "B". Upon

such exchange Sellers shall prepare, execute and forward to Natural in duplicate, for its execution, a suitable written instrument in recordable form, which Natural will execute and return one Copy to Sellers, which instrument by its terms shall release from the lien of dedication hereunder the dedicated acreage so exchanged and impress with the lien of dedication the substituted acreage acquired to the same extent as if originally part of the gas reserves.

3. Sellers may at their option by notice to Natural acquire and dedicate to the uses of this contract any other gas leases, gas purchase contracts, or gas rights covering lands situated within the area outlined and designated "Approval Area" on the attached map; and thereupon such additional acreage shall become subjected to all the terms of this contract.

4. The parties contemplating that the gas which may be produced from the gas reserves will be no more than sufficient to assure, after deduction of quantities thereof used for lease and gasoline plant and compressor plant operation, the deliveries of gas required under this contract, for the purpose of preserving the gas underlying said gas reserves for such deliveries, Sellers agree that they will, during the term of this contract, dedicate the gas reserves to the purpose of the contract, and will not sell or deliver gas produced from the gas reserves to any person other than Natural; except:

(a) Until Natural shall have commenced acceptance hereunder of the quantities of gas to be purchased by it as provided in Article Third hereof, Sellers, in order to keep their leaseholds in force and prevent drainage of gas from their gas reserves, shall have the right to sell and deliver gas therefrom to others than Natural.

(b) Sellers shall during any period when the production of gas from their gas reserves is subject to or limited by any law in the nature of a proration or ratable take law, or any regulation or order thereunder, have the right to sell to others than Natural any amount of gas prorated to or allowed Sellers' wells in excess of the amount of gas Sellers are currently required to deliver to Natural hereunder.

(c) Sellers also reserve the right to use all gas required for the development and operation of their leaseholds and their said plants, together with such gas reserved by lessors for domestic usage under the provisions of Sellers' leases and unitization agreements.

5. Should Sellers be unable to produce the quantities of gas required to be delivered hereunder from their gas reserves by reason of either the physical limitations of their wells located thereon or legal restrictions resulting from a proration or ratable take law, or any regulation or order thereunder, Sellers shall have the preferential right to supplement the quantities which can be physically and legally produced from their reserves by the purchase of gas from others for redelivery hereunder to the extent [fol. 991] necessary to enable Sellers at all times to deliver Natural that proportion of its total system requirements of gas specified in Article Third hereof.

6. It appearing that Natural contemplates the expenditure of large sums of money in the construction of pipelines to Sellers' gas reserves, and because of such expenditure and because the nature of its business requires assurance that the gas reserves of Sellers shall be continuously available to Natural during the entire period of this contract, the parties agree: that the provisions hereof shall be deemed covenants running with such gas reserves and the property and all interests of Sellers used or useful for the satisfaction by Sellers of the provisions of this contract to be by them performed, and shall follow the ownership of same in any hands; that Natural shall be deemed to have acquired by this contract an equitable title in the said gas reserves and property to the extent necessary to preserve and obtain said gas for the satisfaction of the obligations of Sellers under this contract; and that this contract and all its provisions shall be subject to specific performance or any other applicable remedy.

Article Tenth.

Quality of Gas.

1. The gas delivered hereunder at the metering equipment of Natural shall, subject to the standards in this contract expressed, be natural gas as produced in its natural state, except: that Sellers shall treat the gas for recoverable constituents as in Article Fifth hereof provided, and shall, if necessary, treat such gas in order to bring it within the standards of purity hereinafter in this Article expressed.

2. Said gas:

(a) shall be commercially free from solid and/or liquid matter, both at the metering equipment of Natural and at the point where it first enters the custody of Natural;

(b) shall, at the metering equipment of Natural, not contain more than one grain of hydrogen sulphide per one hundred (100) cubic feet, provided that this purity requirement shall be considered as satisfied if a strip of white filter paper, recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, be exposed to the gas for one and one half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging from a jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with the solution and not exposed to the gas;

(c) shall, at the metering equipment of Natural, not contain more than thirty (30) grains of total sulphur per one hundred (100) cubic feet;

(d) shall, at the metering equipment of Natural, meet the requirements of subparagraph 3(c) of Article Fifth;

(e) shall, at the metering equipment of Natural, contain at least nine hundred fifty (950) British thermal units per cubic foot, measured as in Article

Eleventh hereof provided, except as Natural may at its option accept gas of less content.

3. The sulphur and hydrogen sulphide content of the gas delivered by Sellers to Natural shall for the purposes hereof be determined by tests made or caused to be made by Natural as often as it may desire, of samples of gas taken from the gas stream from which deliveries are made, at or near the point of measurement.

4. Should such tests of the gas disclose the presence of [fol. 992] sulphur or hydrogen sulphide in excess of the amounts above specified:

(a) Sellers shall immediately discontinue deliveries hereunder from their wells known or found to produce gas which does not meet such tests, and progressively substitute for such deliveries gas from other suitable wells until a satisfactory test be obtained.

(b) If, after the procedure in the foregoing subparagraph (a) has been followed, tests of the gas continue to disclose the presence of sulphur or hydrogen sulphide in excess of the amounts in this Article permitted, Sellers shall remove all excess sulphur and hydrogen sulphide content by the installation and operation of facilities adequate for such purification.

(c) Natural may, without prejudice to any other remedy, upon advising Sellers of its intention so to do, refuse to accept further deliveries of gas from Sellers hereunder until such time as the gas at the point where samples are taken for testing shall conform to the foregoing sulphur and hydrogen sulphide content requirement.

5. Natural shall have the right to inspect and make copies of all reports and "test data" of Sellers in respect to any test made by Sellers on any of their wells. Natural shall, at its option and as often as it desires, be permitted to test any well of Sellers to determine the characteristics of the gas produced.

6. Should the gas offered for delivery by Sellers fail at any time to conform to any of the specifications in Paragraph 2 of this Article (other than subparagraph (c)

thereof), Natural may at its option, and in addition to other remedy, accept delivery of the gas and itself remove any solid matter, liquid matter, hydrogen sulphide and/or sulphur in any form in excess of the amounts specified, and Sellers shall reimburse Natural for any reasonable expense incurred by Natural in effecting such removal, or for any reasonable expense otherwise incurred by Natural by reason of the failure of the gas to conform to such specifications, all with interest at the rate of six per cent (6%) per annum, and Natural may deduct the amount of all such expense from any sums payable for gas delivered hereunder.

Article Eleventh.

British Thermal Unit Content.

1. The unit of volume for heating value determination (British thermal unit content) shall be one (1) cubic foot of dry natural gas at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch.

2. The average total heating value per cubic foot of the natural gas delivered hereunder for each day shall be determined by means of a Thomas recording calorimeter to be installed at or near the point of measurement by Natural. Such determination of the average total heating value shall be made by averaging the readings recorded for each day and the average thus obtained shall be the average total heating value per cubic foot delivered during such day. The accuracy of the Thomas recording calorimeter shall be checked at least once a week by means of a proof test of pure hydrogen gas, or by means of a test of a standard sample of natural gas, or by means of a Junkers type of flow calorimeter operated according to the method of the United States Bureau of Standards, as may be selected by Natural. The Thomas recording calorimeter shall be deemed operating properly when the total heating value as recorded by it does not vary from the total heating value of pure hydrogen gas, or from the total heating value of a standard natural gas, or from the total heating value as determined by the Junkers calorime-

ter by more than five (5) British thermal units per cubic [fol. 993] foot, according to the test made. Provided that the Thomas recording calorimeter shall be immediately adjusted to register accurately should its recording show any variance from the total heating value determined by such tests. If at any time the Thomas recording calorimeter is out of service or not operating properly for any reason, determination of total heating value shall be made at least once daily by the Junkers calorimeter. Sellers shall have the right to examine the said calorimeter equipment and test records at any reasonable hour and to have a representative present at all tests and adjustments of such calorimeter equipment.

Article Twelfth.

Metering—Unit of Volume.

1. Natural shall furnish, install, operate and maintain metering stations, located as provided in Article Fourth hereof, properly equipped with orifice meters and recording gauges or such other type of meter or meters of standard make and design as may be mutually agreed upon, in such manner as to accomplish the measurement of gas delivered hereunder.

2. Sellers shall have access to said metering equipment at all reasonable times, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by the employees, agents or representatives of Natural. Charts and records from such metering equipment shall remain the property of Natural. Upon request of Sellers, Natural will submit to Sellers records and charts from such metering equipment subject to return by Sellers within ten (10) days after receipt thereof, after which return the charts and records shall be kept on file for a period of five (5) years for the mutual use of both parties. At least once each month and or a date as near the first of the month as practicable, Natural shall calibrate the said meters or cause the same to be calibrated in the presence of a representative of Sellers and the parties shall jointly observe any adjustments which are made in the meters should such adjustments be necessary. For purposes of measure-

ment and meter calibration, the atmospheric pressure shall be assumed to be thirteen and two-tenths (13.2) pounds per square inch, irrespective of variations in natural atmospheric pressure from time to time. Natural shall give to Sellers notice of the time of all tests of meters sufficiently in advance of holding the tests so that they may conveniently have their representative present. If upon any test the metering equipment is found to be inaccurate by two per cent (2%) or more, but not otherwise, registrations thereof and any payments based on such registrations shall be corrected at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, but in case the period is not definitely known or agreed upon, then for a period extending back one-half of the time elapsed since the last day of calibration, not exceeding, however, fifteen (15) days. Following any test any metering equipment found inaccurate shall immediately be adjusted to measure accurately. If for any reason any meter/s are out of service and/or out of repair so that the quantity of gas cannot be ascertained or computed from the readings thereof, the quantity of gas delivered during the period same are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available using the first of the following methods which is feasible:

(a) By using the registration of any check measuring equipment of Sellers if installed and registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

[fol. 994] (c) By estimating the quantity of deliveries by deliveries during preceding periods under similar conditions when the meter was registering accurately.

3. The unit of volume for the measurement of gas delivered under this contract shall be one (1) cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60°F.) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch, and the readings and

registrations of the metering equipment herein provided for shall be computed in terms of such unit.

4. The temperature of the gas flowing through the meter shall be obtained by the use of a recording thermometer so installed that it will properly record such temperature. The average temperature recorded each day shall be used in computing measurements for that day.

5. The specific gravity of the gas shall be determined by Natural at or near the point of metering near the outlet of the gasoline plant at least semi-weekly, and the point of metering at the compressor station at least monthly. Natural shall advise Sellers of the time at which specific gravity tests are to be made in order that Sellers may conveniently have their representative present. The Edwards type specific gravity balance or equipment acceptable to both parties shall be used.

6. All fundamental constants, observations, records and procedures involved in determining and/or verifying the quantity and other characteristics of gas delivered hereunder shall, except as otherwise specified herein, be in accordance with such standards therefor as are or may hereafter from time to time be approved or recommended by the American Gas Association, and in the absence of such standards, then such standards as are acceptable to the parties hereto.

Article Thirteenth.

Warranty of Title.

Sellers hereby warrant title to the gas sold hereunder and the right of Sellers to sell the same and Sellers warrant that all such gas is owned by Sellers free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes and other taxes. Sellers shall at all times have the obligation to make settlements for all royalties due and payments to the mineral and royalty owners under Sellers' leases as modified by any unitization agreements and other documents as may appear of record or otherwise be binding upon Sellers, and in accordance with the terms of the respective leases and to make settlements with all other persons having any interest in the gas sold hereunder, and Sellers agree to in-

demnify Natural and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title to the gas passes to Natural or which may be levied and assessed upon the sale hereof to Natural. In the event any adverse claim of any character whatsoever is asserted in respect to any of said gas, Natural may retain, as security for the performance of Sellers' obligations with respect to such claim under this section, the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined or until Sellers shall have furnished bond to Natural in an amount and with sureties satisfactory to Natural, conditioned for the protection of Natural with respect to such claim.

[fol. 995] Article Fourteenth.

Contract Subject to Laws and Regulations.

This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation.

Article Fifteenth.

Force Majeure Provisions.

1. In the event of either party being rendered unable, wholly or in part, by force majeure applying to its/their operations, to carry out its/their obligations under this contract other than to make payment of amounts due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telephone to the other party as soon as possible after the

occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

2. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs and/or alterations in machinery or lines of pipe, and any other cause whether of the kind herein enumerated or otherwise not within the control of the party claiming suspensions, all of which by the exercise of due diligence such party is unable to foresee or overcome.

Article Sixteenth.

Arbitration.

Should any dispute as to the construction of this contract or the respective rights, duties and obligations of the parties hereunder arise, the issues in dispute shall be arbitrated and determined by the person then the Senior Judge of the United States District Court for the Western District of Oklahoma, or, should he decline to act, such person/s, either one or three, as he shall, after hearing the suggestions of both parties, designate. Any arbitrator/s so appointed by the judge shall be qualified by education and training to pass on the issues in dispute; for example, if engineering questions are involved, qualified engineer/s shall be appointed, if legal questions are involved, qualified lawyer/s shall be appointed, or if the issues indicate, persons of varied training and education may be designated. Such judge or his appointees shall designate the procedure to be followed in the arbitration, which shall give both parties full opportunity to be heard. The determination by the arbitrator/s of the issues presented shall be final and conclusive, and the parties shall

thereafter abide the decision made on such issues. Costs of any such arbitration shall be borne by the parties in equal proportions.

[fol. 996] Article Seventeenth.

Option to Purchase.

Sellers and each of them agree that as often as they or one of them shall receive a bona fide offer from a third party for the purchase in their entirety of either or all of the (a) gas reserves, (b) gas wells thereon, (c) pipe lines, (d) plants, and (e) other property at the time used or useful for the performance of this contract, and any rights under this contract, which offer Seller/s desires to accept, such Seller/s shall, before disposing of such interest, notify Natural by registered mail of the full particulars and terms of such offer, including the name of the party making the offer and the sum offered. Should Natural, within fifteen (15) days after receipt of such notice, advise such Seller/s of its desire to purchase the interest for which offer has been made, a contract for the sale and transfer thereof by such Seller/s to Natural on the same terms and conditions otherwise available to such Seller/s shall result, which contract shall be promptly executed.

Article Eighteenth.

Miscellaneous Provisions.

1. Each of the parties shall be responsible for any damage or injury to third parties or their property arising from the handling of the gas delivered hereunder during the period of its or their custody and possession.

2. Any communications or notices pertaining to this contract shall be considered as duly delivered when mailed by registered mail to the post office address of either of the parties hereto, as set out in this contract, or to such other address as either party shall designate by formal written notice.

3. This contract may be assigned by either of the parties hereto to any person, firm or corporation who shall ex-

pressly assume the obligations hereof on the part of the assignor to be performed and, in the case of assignment by Sellers or one of them, who shall acquire all of the assignor's interest in gas reserves and properties of Sellers herein referred to; but it may not otherwise be assigned without the consent of the other party hereto. Whenever any party is referred to herein, such reference shall be deemed to include the successors and assigns of such party. Provided, however, that nothing herein contained shall be construed to prevent any party hereto from pledging all or any portion of such party's property as security under any mortgage, deed of trust, or other similar lien, or from pledging this contract or any benefits accruing hereunder to the party making the pledge.

4. The term "gas", wherever used herein, shall mean natural gas. The words "herein" or "hereunder" shall, whenever the sense properly permits, refer to all provisions of this contract, rather than to the provisions of any particular Article or its subdivision.

Article Nineteenth.

Term.

1. This contract shall, unless terminated before the commencement of deliveries hereunder according to the provisions of Article Second hereof, continue and remain in effect until January 1, 1965, and as long thereafter as Sellers are able to deliver gas in paying quantities under its terms and conditions; provided, however, that Natural may, on January 1, 1965, or the first day of any year thereafter, upon one (1) year's prior notice to Sellers, cancel and terminate this contract.

[fols. 997-999] 2. Should Sellers fail or be unable from any cause for a period of six (6) months to deliver to Natural at least twenty-five per cent (25%) of the volumes of gas required to be delivered by this contract, Natural may at its option give notice to Sellers of its intention to cancel this contract upon a stated subsequent date not earlier than

two (2) years from the date of such notice, and this contract shall terminate on the date so fixed.

Executed the day and year first above written.

"Natural", Natural Gas Pipeline Company of America, By Floyd C. Brown, Its President.

(Seal)

Attest: G. P. Garver, Secretary.

"Sellers", Harrington & Marsh, By (DDH) D. D. Harrington, (SM,Jr.) Stanley Marsh, Jr., (EFM) Estelle Fariss Marsh, (TJW, Jr.) T. J. Wagner, Jr., (IDM) Ida D. Marsh, (IMMcC) Isabel Marsh McCormick, (JLMcC) James L. McCormick. (SM, Jr.) Stanley Marsh, Jr., Independent Executor of the Estate of Stanley Marsh, deceased.

• • • • • • •

[fols. 1000-1006] Exhibit "A"

Summary of Dedicated Gas Reserves
Gas Purchase Contract

between

Natural Gas Pipeline Company of America

and

Harrington & Marsh
Texas County, Oklahoma

	Acreage
Presently Developed Leaseholds	
23 Producing Gas Wells	14,720
Developed Leaseholds Under Contract	
5 Producing Gas Wells	3,200
Undeveloped Leases	60,152
Grand Total—Gas Reserves	78,072

[fol. 1007] EXHIBIT No. 49

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL Owners in Texas County, Oklahoma, for an Order Determining the Minimum Price at Which Gas Produced From the Guymon-Hugoton Field May Be First Purchased or Sold.

Stipulation

The following facts are stipulated by the undersigned and may be received and accepted in evidence by Commission to the same extent as if testified to by qualified witnesses, with the privilege granted to any adverse parties to show any errors therein.

1. Northern Natural Gas Company is a Delaware corporation duly licensed to transact business in the State of Oklahoma as a foreign corporation. It is a natural gas company as defined by the Natural Gas Act, as amended (15 U. S. C. A. 717) and engaged generally in the business of producing and purchasing natural gas for transportation and sale in interstate commerce for resale under the provisions of the Natural Gas Act by means of an integrated pipeline system and facilities extending from Texas into and through Oklahoma, Kansas, Nebraska and Iowa and into South Dakota and Minnesota. As of December 31, 1951 Northern Natural Gas Company owned and still owns [fol. 1008] and operates approximately 5663 miles of gathering and transmission lines in its said integrated pipeline system, of which 158.2 miles are located in Guymon-Hugoton Gas Field, or adjacent thereto, in the State of Oklahoma, of which 88.6 miles is main line and loop transmission lines and 69.6 miles is gathering line.

2. In operating its said integrated pipeline system and facilities and as an integral part thereof Northern Natural Gas Company has entered into two contracts for the purchase of natural gas as it is produced in its natural state in said Guymon-Hugoton Gas Field in Texas County, Okla-

homa, and one contract for the purchase of residue gas, a constituent of natural gas, that true and correct copies of such purchase contracts, with amendments thereto, are attached hereto, marked respectively Exhibits A, B. and C. The stream of gas from the points of purchase and delivery under the aforementioned contracts flows continuously, without interruption, from the point of purchase and delivery to the markets of Northern Natural Gas Company in states other than Oklahoma into which Northern Natural Gas Company's pipeline system extends; that during the calendar year 1951 Northern Natural Gas Company purchased 175,755,000 cubic feet of gas at the wellhead in said Guymon-Hugoton Gas Field and purchased 25,254,627,000 [fol. 1009] cubic feet of residue gas which had heretofore been produced in the Guymon-Hugoton Gas Field and certain hydrocarbon constituents removed therefrom by the seller thereof, Hugoton Plains Gas and Oil Company, prior to the delivery of such residue gas to Northern Natural Gas Company. For the calendar year 1952 Northern Natural Gas Company estimates that it will, under its purchase contracts, Exhibits A. B and C, purchase 12,758,201,000 cubic feet of Natural gas at the wellhead and 23,284,751,000 cubic feet of residue gas after the same has been processed by the seller thereof, measured at 14.65 pounds pressure base, such volume of gas amounting to approximately 14% of the total system requirements of Northern Natural Gas Company, all of which gas will be produced in the Guymon-Hugoton Gas Field; that to supply such gas or residue gas the same will be produced from approximately 350 gas wells in the Guymon-Hugoton Gas Field.

Dated this 9th day of July, 1952.

(S.) T. Murray Robinson, Attorney for Applicants, by Mark H. Adams, Attorneys for Respondents, Northern Natural Gas Company, Lawrence I. Shaw, G. E. Stahl, Mark H. Adams.

Approved: —— ——, Attorney for Corporation Commission.

"Details as to contracts attached to such stipulation are omitted herefrom by agreement of counsel."

[fol. 1010] EXHIBIT No. 50

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

IN THE MATTER OF THE APPLICATION OF CERTAIN MINERAL Owners in Texas County, Oklahoma, for an Order Determining the Minimum Price at Which Gas Produced From the Guymon-Hugoton Field May Be First Purchased or Sold.

Stipulation

The following facts are stipulated by the undersigned, and may be considered as evidence as if testified to by qualified witnesses:

1. Panhandle Eastern Pipeline Company is a Delaware Corporation authorized to do business in the State of Oklahoma. It owns an integrated natural gas pipeline system extending from producing areas in the states of Texas, Oklahoma and Kansas through portions of the states of Missouri, Illinois, Indiana and Ohio, and terminating in the state of Michigan, and operates such system under certificates of public convenience and necessity issued by Federal Power Commission.

2. Panhandle produces natural gas from extensive leasehold acreage owned and operated by it and located in the states of Texas, Oklahoma and Kansas. It also purchases large volumes of gas from producers having wells located in the said states. Said produced and purchased gas is commingled and immediately transported by Panhandle [fol. 1011] out of the respective state where produced and sold by Panhandle at wholesale (a) to utilities located in the aforesaid several states for resale by the said utilities for domestic, commercial, industrial and other uses and (b) directly to industries in the said states for such industries' own use. Panhandle is a "natural-gas company," as defined in the Federal Natural Gas Act, and, under the applicable provisions of the Act, is subject to the jurisdiction of the Federal Power Commission.

3. With respect to the purchase of natural gas produced

in the Guymon-Hugoton Field of Oklahoma, Panhandle's operations had their inception with the execution of a gas purchase contract between Panhandle and Phillips Petroleum Company dated April 5, 1943. A copy of the said contract, with amendments thereto, is attached to this Stipulation as Exhibit "A", and made a part hereof. Operations under this contract have been carried on between the parties continuously since the year 1944.

4. Under the provisions of said contract, the Oklahoma-produced raw gas is gathered by Phillips through lines "D", "E", and "F" (see attached plat) (Marked Exhibit "A", attached hereto and made a part hereof) into the State of Texas. After this gas has crossed the state line into Texas and has been commingled with Texas produced [fols. 1012-1013] gas, it is compressed and processed, and the residue is then sold and delivered to Panhandle Eastern Pipeline Company by Phillips in Hansford County, Texas. Delivery is made and title to the residue gas passes to Panhandle at the point indicated by the letter "M" on the said plat, and such gas is immediately transported by it outside the State of Oklahoma for consumption in other states.

5. With respect to the production of gas by it in the Guymon-Hugoton Field, Panhandle's operations in that field had their inception in the year 1948. At the present time Panhandle owns and operates 56 producing gas wells in that field, from which it is currently taking approximately 750,000 mcf per month at 14.65 pounds. The gas that is produced from said wells is gathered by Panhandle and immediately transported by it outside the State of Oklahoma for sale and consumption in other states.

Dated this 8th day of July, 1952.

(S.) T. Murray Robinson, Attorneys for Applicant, Edw. H. Lange, Hazley, Tryon & Sweet, Attorneys for Panhandle Eastern Pipeline Company.

Approved: —— ——, Attorneys for the Corporation Commission

[fol. 1014] "Attached to the stipulation is a copy of Exhibit 33, Panhandle-Phillips Contract of April 5, 1943 and Exhibit 34, letter supplementing such contract and dated April 25, 1944. These instruments are not copied here, as they appear in the Record as other Exhibits."

EXHIBIT NO. 52

52

GUYMON-HUGOTON FIELD - GAS PRODUCED AND RUN.
DATA FROM OKLAHOMA COMMISSION MONTHLY ALLOWABLE REPORTS.
BY GATHERERS AND/OR PIPE LINE COMPANIES
14.65# P.S.I.A. PRESSURE BASE

	Cabot Carbon Co.			Cities Service Gas Co.			Northern Natural Gas Co.	
1951	No. of Wells	Total Connected Well Data Current Allowable	Runs	No. of Wells	Total Connected Well Data Current Allowable	Runs	No. of Wells	Total Connected Well Data Current Allowable	Runs
January	29	420,706 M	283,520 M	422	5,640,090 M	7,261,012 M	127	2,147,131 M	2,380,024 M
February	29	453,531	344,513	423	6,106,410	7,363,080	129	2,337,841	2,234,535
March	29	461,277	317,449	423	6,265,885	6,492,568	132	2,389,493	2,562,632
April	29	431,561	372,921	427	5,862,239	6,452,568	136	2,253,415	2,152,424
May	29	409,579	514,972	434	5,601,956	4,498,682	141	2,145,805	2,293,596
June	29	303,547	515,358	434	4,208,048	4,359,801	142	1,629,224	1,673,378
July	29	331,354	652,965	435	4,593,519	3,570,715	142	1,779,576	1,987,154
August	29	289,924	713,411	436	4,025,043	3,642,622	142	1,550,073	1,764,040
September	29	342,221	408,372	440	4,753,516	4,292,658	143	1,837,942	1,778,601
October	29	393,705	375,045	441	5,645,168	5,445,364	145	2,013,523	2,043,570
November	29	411,555	344,605	441	5,870,961	6,285,722	146	2,108,205	2,124,651
December	29	462,110	366,584	441	6,601,014	6,086,609	146	2,380,518	2,529,198
Totals - (14.65#)			5,209,715			65,751,401			25,523,805
Totals - (16.4#) (Factor 0.8933)			4,653,838 M			58,735,727 M			22,800,413 M
% of Total Gas Run			3.39%			42.83%			16.63%

1015

EXHIBIT "B"

1951	Pancoma Corporation No. of Wells	Total Connected Well Data Current Allowable	Runs	Phillips "B" System No. of Wells	Total Connected Well Data Current Allowable	Runs	Phillips "C" System No. of Wells	Total Connected Well Data Current Allowable	Runs
January	117	2,373,297 M	2,200,286 M	172	1,983,115	1,986,951 M	48	499,210 M	527,887 M
February	117	2,558,471	2,136,162	171	2,137,845	1,981,636	58	583,990	517,255
March	117	2,602,162	2,039,923	171	2,174,353	2,310,569	58	603,305	678,805
April	117	2,434,532	1,911,459	173	2,034,282	2,287,072	61	583,204	557,614
May	117	2,310,527	1,952,627	174	1,954,996	2,222,451	61	576,618	1,044,090
June	117	1,712,379	1,995,379	174	1,448,888	1,834,702	67	427,344	605,121
July	117	1,869,239	1,940,991	174	1,581,611	1,827,201	74	466,490	215,224
August	117	1,635,525	1,889,409	174	1,397,698	1,531,679	77	456,896	900,250
September	117	1,930,546	1,876,734	174	1,649,818	1,592,211	78	539,312	550,920
October	117	2,130,274	1,725,082	174	1,746,290	2,063,529	81	563,262	622,788
November	117	2,214,818	2,282,064	175	1,819,895	2,083,183	81	697,071	575,854
December	117	2,486,888	2,414,643	175	2,050,387	2,198,518	81	782,700	802,590
Totals - (14.65#)			24,364,759			23,919,702			7,598,398
Totals - (16.4#) (Factor 0.8933)			21,765,039 M			21,367,470 M			6,787,649 M
% of Total Gas Run			15.87%			15.58%			4.95%

1015a

EXHIBIT "B"
Page 2

843

Southwestern Public Service Co.				1951 Totals		
1951	No. of Wells	Total Connected Well Data Current Allowable	Runs	No. of Wells	Current Allowable	16.4# M.C.F. Run
January	5	93,619 M	146,020 M	929	13,165,118 M *	14,785,700 M
February	5	100,924	103,031	932	14,279,012	14,680,212
March	5	102,647	103,229	935	14,599,122	15,505,175
April	5	96,035	83,965	948	13,695,268	13,818,023
May	5	91,143	64,696	961	13,090,624	12,591,114
June	5	67,648	48,605	968	9,796,978	11,032,344
July	5	73,736	57,986	976	10,695,525	10,252,236
August	5	64,516	88,694	980	9,426,675 **	10,530,105
September	5	76,154	116,329	986	11,129,509	10,615,825
October	5	93,535	123,998	992	12,585,757	12,399,376
November	5	97,247	114,709	994	13,219,752	13,810,788
December	5	109,193	105,396	994	14,872,810	14,503,538
Totals - (14.65#)			1,156,658 M			153,524,436 M
Totals - (16.4#)			1,033,243 M			151,963,607 M
% of Total Gas Run			0.75%			100%

* Should be 13,157,168 M - Evidently 7,950 M of changes were not reflected in January '51 report, 137,143,379 M. Did not change as that would upset each well's current allowable a little.

** August total Current Allowable's should be 9,419,675 M - (Same remark as above.)

1015b

EXHIBIT "B"
Page 3

629

1951 GUYMON-HUGOTON FIELD
TOTAL GAS PRODUCED, CONSUMED IN OKLAHOMA, AND EXPORTED BY PRODUCERS, GATHERERS AND/OR PIPE LINE COMPANIES

NAME OF COMPANY	16.4# P.S.I.A. M.C.F. PRODUCED, PURCHASED, IMPORTED AND LOANED GAS RETURNED	16.4# P.S.I.A. M.C.F. CONSUMED IN OKLAHOMA	16.4# P.S.I.A. M.C.F. EXPORTED FROM OKLAHOMA
Cabot Carbon Company	4,653,838	4,653,838	-0-
Cities Service Gas Company	58,735,727	8,686,301 (14.79%)	50,049,426
Northern Natural Gas Company	22,800,413	647,413 X (2.84%)	22,153,000
Panoma Corporation (Prod.)	21,765,039		
Returned loaned gas	3,774,172		
SUB-TOTALS	25,539,211	362,190 XX (1.42%)	25,177,021
Phillips "B" System	21,367,470 *	-0-	21,367,470
Phillips "C" System	6,787,649 **	-0-	6,787,649
Southwestern Public Service Company			
Its production and purchases	1,033,243		
Its imported gas	115,256		
SUB-TOTALS	1,148,499	1,148,499	-0-
Totals Produced and/or Purchased	137,143,379 M		
Grand Totals - including imported gas and returned loaned gas sold	141,032,807 M	15,498,241 M	125,534,566 M
Per Cents (%'s) of Grand Totals	(100%)	(10.99%)	(89.01%)
14.65# M.C.F. equivalent	157,886,227 M	17,350,281 M	140,535,946 M
14.65# imported gas	(129,023)		

X Hugoton-Plains Gas & Oil Company's gathering system loss and use gasoline plant fuel and volume shrinkage.

XX Natural Gas Pipeline Company of America's Compressor Station Fuel, use and loss in Oklahoma.

* This Oklahoma gas is processed in the State of Texas - tail gas is sold in Texas to P.E.P.L. Co.

** This Oklahoma gas is processed in the State of Texas - tail gas is sold in Texas to Michigan-Wisconsin Pipeline Co.

RMS/m

EXHIBIT "O"

1951

TOTAL OKLAHOMA GAS TO PIPELINES SERVING MARKETS OTHER THAN THE PRODUCERS' LEASES - NOT INCLUDING CASINGHEAD GAS UNLESS SOLD FOR SUCH MARKETS.

1. Amount of total Oklahoma gas:-

(A)	Total 14.65# p.s.i.a. Gas	404,825,372 M
(B)	Total 16.4# p.s.i.a. equivalent gas	361,630,505

2. Guymon-Hugoton Field Gas only:-
Texas County, Oklahoma:-

(A)	Total 14.65# p.s.i.a. gas	153,524,436 M
(B)	Total 16.4# p.s.i.a. equivalent gas	137,143,379

3. All Oklahoma Gas, excepting Guymon-Hugoton Field:-

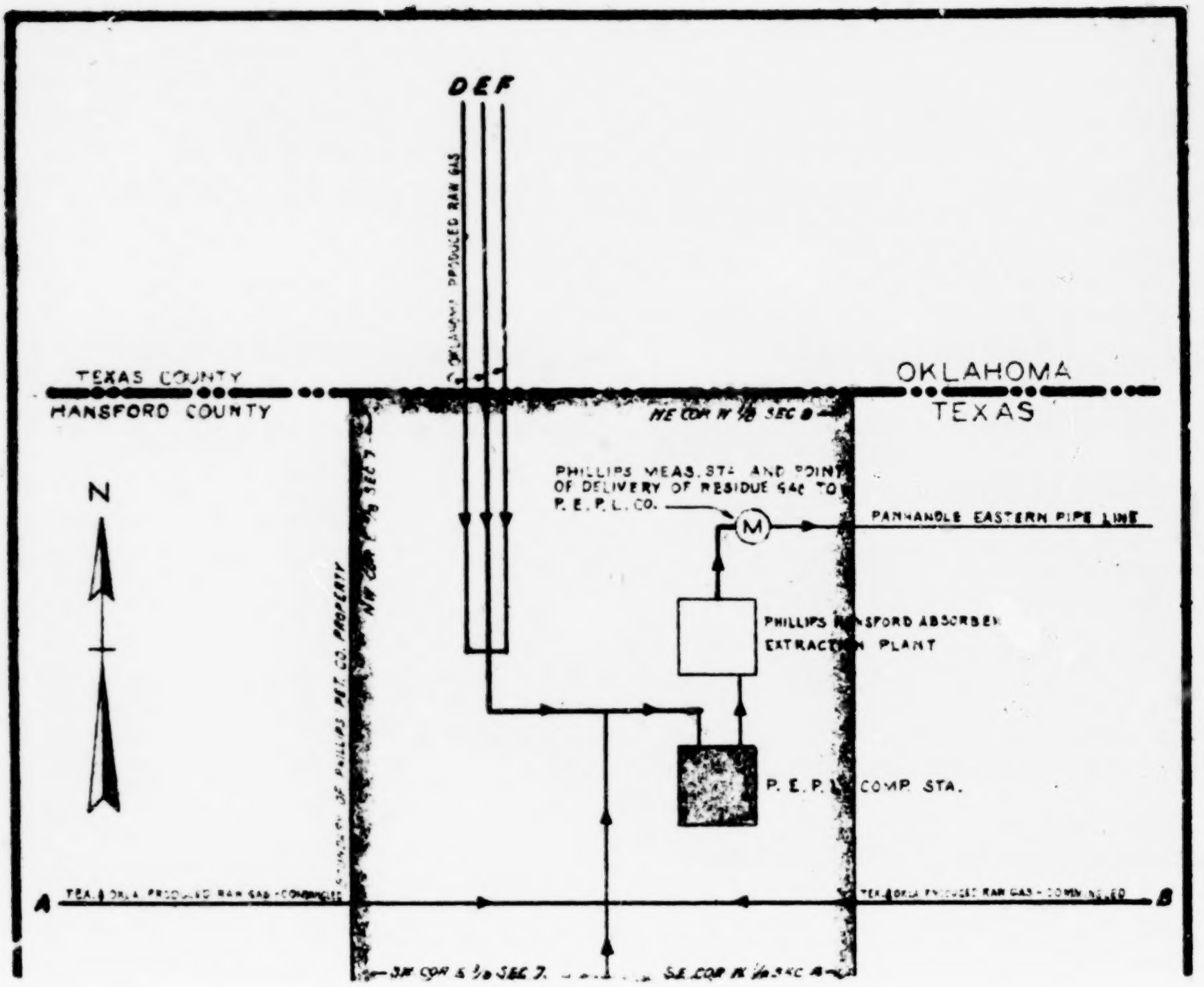
(A)	Total 14.65# p.s.i.a. gas	251,300,936 M
(B)	Total 16.4# p.s.i.a. equivalent gas	224,476,048

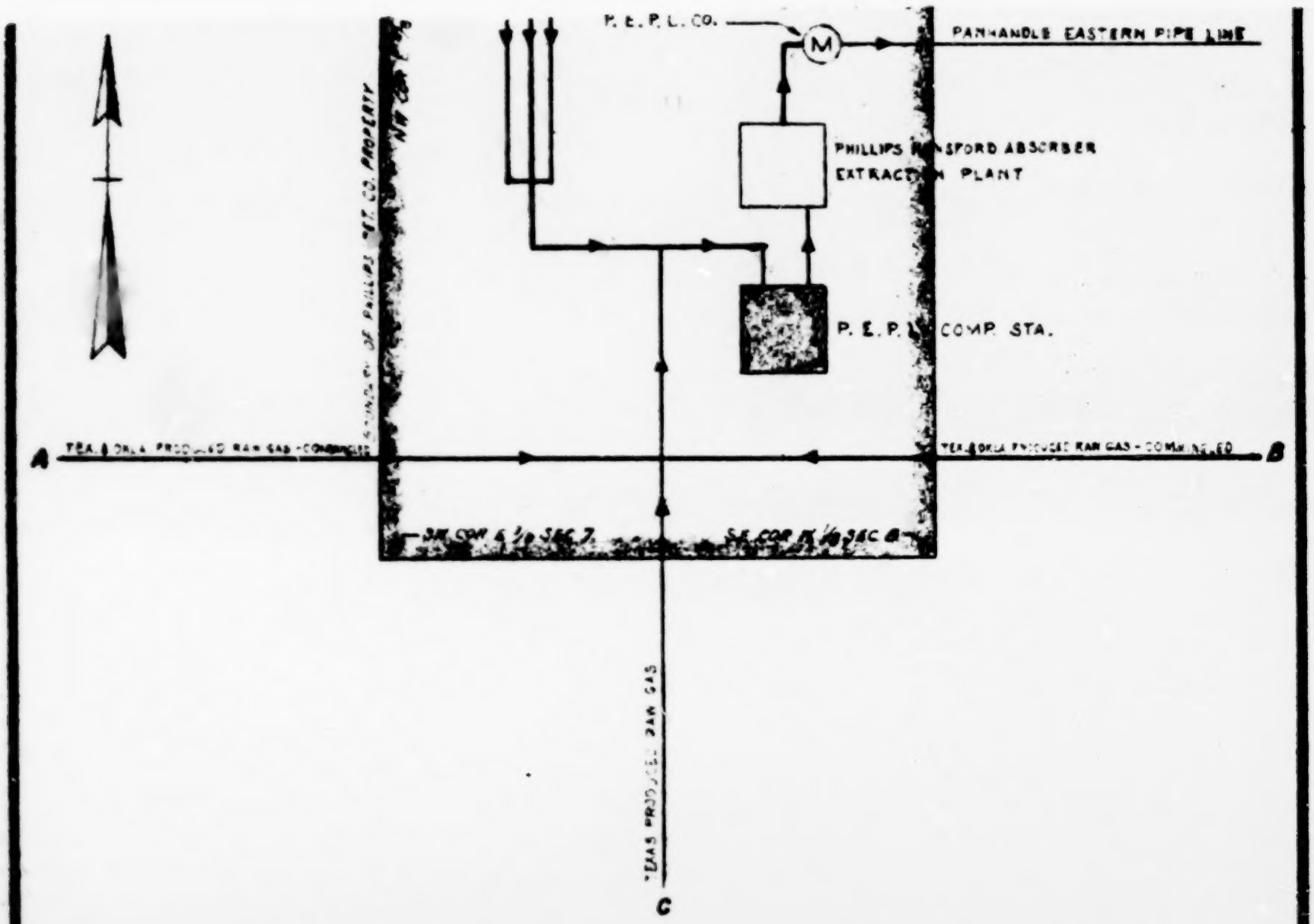
1951 OKLAHOMA GAS TO PIPE LINES.
IMPORTED & EXPORTED GAS.
BALANCE CONSUMED OR STORED IN OKLAHOMA.

1951	TOTAL OKLAHOMA GAS TO PIPE LINES. MIXED M.C.F.	TOTAL GAS IMPORTED INTO OKLA.	LESS TOTAL GAS EXPORTED FROM OKLAHOMA	BALANCE OF GAS CONSUMED OR STORED IN OKLAHOMA
Basic General Data	378,000,484	66,309,051 M	182,977,510 M	261,332,025 M
Panoma Corp.-14.65# gas loaned in former years, returned in 1951.	4,225,186	-0-	-0-	4,225.186
Totals - Mixed Pressure Base	382,225,670 M (1,047,194 M P/Day)	66,309,051 M	182,977,510 M	265,557,211 M
Less: 14.65# M.C.F. Guymon-Hugoton Field.	157,886,227 *		140,535,946	17,350,281
16.4# Gas-Balance of Oklahoma	224,339,443 M	66,309,051 M	42,441,564 M	248,206,930 M
%'s Balance of Okla. 100% =	290,648,494 M		14.60%	85.40%
%'s - All Oklahoma Gas 100% =	448,534,721 M		40.79%	59.21%
%'s - Guymon-Hugoton Field only 100% =	157,886,227 M		89.01%	10.99%

* Includes 129,029 M imported by S. W. Pub. Ser. Co.

EXHIBIT A





SCHEMATIC PLAT
SECTOR OF HANSFORD COUNTY TEXAS
(PORTIONS OF SECS. 7&8, BLK. I, P.E.S. SURVEY)
PHILLIPS PETROLEUM CO.
EXTRACTION PLANT & CONTIGUOUS AREA

Feb. 12, 1952.
DRAWING NO. 11427

SEE DRAWING NO. 6553

[fol. 1018] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1019] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1954

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA, Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al.

ORDER NOTING PROBABLE JURISDICTION—November 8, 1954

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 8, 1954.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
SEP 1 1954
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 320

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA

STATEMENT AS TO JURISDICTION

JACK T. CONN
D. H. CULTON
COLEMAN HAYES
ARTHUR R. SEDER, JR.
Counsel for
Michigan-Wisconsin
Pipe Line Company

CLARENCE H. ROSS
CHARLES C. McDUGALD
WARREN T. SPIES
D. H. CULTON
COLEMAN HAYES
Counsel for
Natural Gas Pipeline
Company of America

INDEX

SUBJECT INDEX

Page

Statement as to Jurisdiction 1

The Opinion Below 2

Jurisdiction 2

Questions Presented 4

Statement 4

1. The Nature of Appellants' Activities 4

2. The Order Here Involved 6

3. The Appeal in the State Court 7

The Federal Questions are Substantial 9

1. The Order, as Applied to Appellants, is Incompatible With the Jurisdiction of the Federal Power Commission Under the Natural Gas Act 9

2. The Order, as Applied to Appellants, is Violative of the Commerce Clause 11

3. The State Court's Attempt to Rewrite the Gas Purchase Contracts Cannot Be Sustained 15

4. The Commission's Order Contravenes the Due Process and Contract Clauses of the Constitution of the United States 17

(a) The order is extraterritorial in application 18

(b) The order is arbitrary and unreasonable 18

(c) The order impairs the obligation of contracts .. 20

Conclusion 21

Appendix A—Majority and Minority Opinions of the Supreme Court of Oklahoma i

Appendix B—Order No. 26096 of the Corporation Commission of Oklahoma xxix

TABLE OF CASES CITED

Page

Bailey v. Alabama, 219 U.S. 219 14

Baldwin v. Seelig, 294 U.S. 511 18

Broad River Power Co. v. So. Carolina, 281 U.S. 537 17

Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182 8

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179 ..... 3, 6, 12, 13

De Korte v. Du Mond, 76 N.Y.S.2d 750 18

Foster Fountain Packing Co. v. Haydel, 278 U.S. 1 14

Lake Erie & Western Ry. Co. v. Public Utilities Commission, 249 U.S. 422 3

Magnolia Petroleum Co. v. Hunt, 329 U.S. 430 18

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 ..5, 12

Michigan-Wisconsin Pipe Line Company, In the matter of, Opinion No. 275 10

Milk Control Board v. Eisenberg, 306 U.S. 346 ..... 13, 18

Missouri v. Kansas Natural Gas Co., 265 U.S. 298 12

Natural Gas Pipeline Company v. Panoma Corporation, 271 P. 2d 354 8

Natural Gas Pipeline Company v. Panoma Corporation, No. 191 8

New York Transit Co. v. New York, 303 U.S. 573 17

New York Life Ins. Co. v. Head, 234 U.S. 49 18

Parker v. Brown, 317 U.S. 341 ..... 12, 13

Phillips Petroleum Company, In re, 10 F.P.C. 246 ..... 11, 16

Phillips Petroleum Company v. Wisconsin, 347 U.S. 672 ..... 5, 9, 11, 12, 16

Public Utilities Commission v. United Fuel Gas Co., 317 U.S. 456 11

Public Utilities Commission v. Attleboro Steam & Electric Company, 273 U.S. 83 12

Page

So. Carolina State Highway Dept. v. Barnwell, 303 U.S. 177..14, 19

Southern Wisconsin Ry. Co. v. Madison, 240 U.S. 457..... 17

Treigle v. Acme Homestead Assn., 297 U.S. 189..... 21

Williams v. Ruffy, 96 U.S. 176..... 3

Wisconsin v. Federal Power Commission, 205 F. 2d 706..9, 11, 16

STATUTES AND OTHER AUTHORITIES CITED

Constitution of the United States,
Article I, Section 8, Clause 3.....4, 7, 9

Constitution of the United States,
Article I, Section 10.....4, 8, 17, 20

Constitution of the United States,
Due Process Clause of the 14th Amendment.....4, 7, 8, 17, 18

28 U.S.C. 1257(2)..... 3

15 U.S.C. 717.....4, 7, 9

Title 52, Section 239, Oklahoma Statutes, 1951..... 2

Federal Power Commission, Order 174.....10, 14

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

NO. _____

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

NO. _____

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA.

STATEMENT AS TO JURISDICTION.

Appellants Michigan-Wisconsin Pipe Line Company (Michigan-Wisconsin) and Natural Gas Pipeline Company of America (Natural) submit herewith their statement

particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the judgment of the Supreme Court of Oklahoma in Causes Nos. 35,731 and 35,732, affirming an order of the Corporation Commission of Oklahoma. These appeals involve identical questions decided in one opinion by the state court upon a common record and a single jurisdictional statement is filed. Panhandle Eastern Pipe Line Company, appealing on the same record, is filing a separate jurisdictional statement.

THE OPINION BELOW.

The opinion of the Oklahoma Supreme Court has not yet been reported. Copies of the majority and dissenting opinions are attached hereto as Appendix A.

JURISDICTION.

1. These are appeals from a decision of the Supreme Court of Oklahoma affirming an order of the Corporation Commission of Oklahoma entered under Title 52, Sec. 239, Oklahoma Statutes, 1951, fixing a minimum price at which the residue constituent[1] of natural gas produced from the Guymon-Hugoton Field in Oklahoma shall be sold to interstate pipeline companies after production, gathering and processing of the raw gas has been completed.

2. The Supreme Court of Oklahoma handed down its opinion on April 27, 1954. Appellants' petitions for rehearing were denied on July 13, 1954. Notices of Appeal to this Court were filed by appellants with the Clerk of the Supreme Court of Oklahoma on August [illegible], 1954.

---

[1] Residue gas is that portion of raw gas which remains in gaseous form after the raw gas has been processed in a gasoline plant for the extraction of natural gasoline and other hydrocarbons in liquid form.

3. The jurisdiction of this Court upon appeal is conferred by 28 U.S.C. §1257(2). Appellants challenge the validity of the order of the Corporation Commission of Oklahoma, a "statute of a state" within the meaning of that provision, on the ground that, as applied to their activities, it is repugnant to the Constitution and statutes of the United States, and the decision of the highest court of the state was in favor of its validity.

4. Cases believed to sustain the jurisdiction of this Court on appeal include *Williams* v. *Braffy*, 96 U.S. 176, 183; *Lake Erie & Western Ry. Co.* v. *Public Utilities Commission*, 249 U.S. 422; *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U. S. 179, 181.

5. A copy of Order No. 26,09[illegible] of the Corporation Commission of Oklahoma, the "statute" involved within the meaning of 28 U.S.C. §1257(2), is attached hereto as Appendix B. It is not officially reported. Section 1 of that order, which is here in issue, is as follows:

> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

QUESTIONS PRESENTED.

1. Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of the Constitution of the United States (Art. I, Sec. 8, Cl. 3) and the Natural Gas Act (15 U.S.C. 717, et seq.), to fix the price of residue gas sold at the outlet of a gasoline plant to an interstate pipeline company for immediate transportation to markets in other states, or to prohibit the production of natural gas if the price fixed for residue gas obtained therefrom is not obtained.

2. Whether, as applied to Michigan-Wisconsin, the Commission's order fixing the price of residue gas sold in Texas is an attempt to exercise extraterritorial jurisdiction and violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

3. Whether, as applied to appellants, the Commission's order is arbitrary and unreasonable and abrogates private contracts for no public purpose, contrary to the Due Process Clause of the Fourteenth Amendment and the Contract Clause (Art. I, Sec. 10) of the Constitution of the United States.

STATEMENT.

1. The Nature of Appellants' Activities.

Appellants Michigan-Wisconsin and Natural are natural gas companies as defined in the Natural Gas Act, as amended, and operate interstate gas pipeline transportation systems under certificates of public convenience and necessity issued by the Federal Power Commission. The operations of both companies, in so far as the issues here involved (other than the issue relating to the exercise of extraterritorial jurisdiction) are concerned, were recog-

nized by the state court to be identical, and the decision of the state court and the order of the Corporation Commission apply alike to both.[2] Because this Court is familiar with the circumstances under which Michigan-Wisconsin purchases and takes possession of residue gas from Phillips Petroleum Company (Phillips),[3] the facts of that case will be stated and discussed.

Michigan-Wisconsin's interstate pipeline system originates at the outlet of a gasoline plant owned and operated by Phillips in Hansford County, Texas. From that point the line extends through parts of Oklahoma, Kansas, Missouri, Illinois and Indiana to its termini in Michigan and Wisconsin, its principal markets being the Detroit and Milwaukee metropolitan areas. Except for insignificant amounts, all of the gas transported by Michigan-Wisconsin is residue gas purchased from Phillips after the latter has removed the liquid hydrocarbons from the natural gas at its gasoline plant.

The natural gas processed by Phillips at this plant (the residue constituent of which it sells to Michigan-Wisconsin at the outlet of the plant) is produced in the first instance from wells in both Texas and Oklahoma. The gas from all such wells is then gathered together by Phillips through its gathering system and commingled at the inlet of its

---

[2] Natural's operations are fully described in its Statement as to Jurisdiction in No. 191 (Oct. Term 1954). Briefly, Natural's system, in part, extends from the outlet of a gasoline plant owned and operated by Panoma Corporation to markets in Iowa, Nebraska, Illinois, Indiana and Wisconsin, its principal market being the Chicago metropolitan area. Under Natural's contract with Panoma, title to the gas produced and gathered by Panoma passes to Natural, and the gas is physically delivered to it, at the outlet of Panoma's gasoline plant.

[3] The identical transaction here involved was before this Court twice last term. *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U.S. 157, and *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672.

gasoline plant in Texas prior to processing. Thus, the residue gas purchased by Michigan-Wisconsin from Phillips in Texas originates in wells located in both Texas and Oklahoma. Michigan-Wisconsin itself produces no gas in Oklahoma, purchases no gas in Oklahoma, and sells no gas in Oklahoma. Its sole properties in Oklahoma consist of its 24-inch pipeline, which cuts across part of the state.

Michigan-Wisconsin acquires such residue gas from Phillips under a contract dated December 11, 1945, and certain amendments thereto. The contract contains provisions dealing with prices and deliveries. In addition, the contract provides that Phillips "dedicates" to the performance of its contract the gas under certain acreage which it owns or controls, a portion of such land lying in Texas and a portion in Oklahoma. By this provision, Phillips agreed to sell to Michigan-Wisconsin all of the residue from gas produced from the leases so dedicated after having removed the liquefiable constituents of the gas produced. The contract also contains the usual provisions requiring the seller to produce, gather and process the natural gas and to deliver the residue, conforming to certain standards of quality, at the outlet of its gasoline plant in Texas. It was stipulated before the Commission that title to the residue gas passes to Michigan-Wisconsin at the point of delivery.

2. The Order Here Involved.

By its order of July 29, 1952 (App. B), the Commission did three things: it (a) increased the minimum price for gas sold at the wellhead from 7¢ per m.c.f. as provided in its order of December 9, 1946 (involved in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179) to 9.8262¢ per m.c.f., an increase of 40%; (b) fixed a minimum price of 9.8262¢ plus the reasonable cost of gathering for gas

sold, without processing, at points remote from the well; and (c) fixed a minimum price of 9.8262¢ per m.c.f. for residue gas—the remaining constituent of natural gas after removal of liquefiable hydrocarbons. Neither Natural nor Michigan-Wisconsin purchases raw gas produced in Oklahoma either at or away from the wellhead. Both companies, however, purchase the *residue* from gas produced in Oklahoma at the outlet of gasoline plants—Michigan-Wisconsin's purchase being made in Texas and Natural's in Oklahoma. Both appellants are therefore affected by the third provision of the Commission's order, which reads:

> "If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet."

The result of the Commission's order was to raise the price Natural must pay Panoma by 57% above the contract price, an annual increase of $1,108,505, and to require Michigan-Wisconsin to pay Phillips annually $169,672 above its contract price, based on 1951 purchases.

3. The Appeal in the State Court.

Pursuant to the provisions of Oklahoma statutes, appellants filed separate appeals from the Commission's order in the Supreme Court of Oklahoma. In their respective Petitions in Error, both appellants raised the federal questions here involved, contending that the Commission's order imposes an unlawful burden upon and regulation of interstate commerce, in violation of the Commerce Clause of the Federal Constitution, that the order attempts to set the price for the sale of natural gas to a company subject to the Natural Gas Act, contrary to the Federal Constitution, that the Commission's order is arbitrary and unreasonable and in violation of the Due Process

Clause of the Fourteenth Amendment, and that the Commission's order impairs the obligation of contracts contrary to Article I, Section 10 of the Constitution of the United States. Additionally, Michigan-Wisconsin contended that the Commission's order fixing the price at which Phillips must sell gas to Michigan-Wisconsin in Texas is void under the Commerce Clause and under the Fourteenth Amendment as an attempt to exercise extraterritorial jurisdiction. These contentions were also spelled out and argued in detail in briefs filed with the state court and in oral argument.

The fact that the federal questions were adequately and properly raised was recognized by the state court in its opinion (See App. B, p. X, XII, *infra*), while the dissenting opinion specifically adopts the position that the Natural Gas Act and the Commerce Clause foreclose the Corporation Commission from attempting to fix the price at which residue gas must be sold to interstate pipeline companies (See App. B, p. XX, XXI, *infra*). This Court will accept the recognition by the state court that the federal questions were properly raised in that court. *Charleston Federal Savings & Loan Assn.* v. *Alderson*, 324 U.S. 182, 185.

The Supreme Court of Oklahoma, four members dissenting, affirmed the Commission's order. One member of the majority concurred specially, apparently feeling bound under principles of *stare decisis* to follow that court's decision in *Natural Gas Pipeline Company* v. *Panoma Corporation*, 271 P. 2d 354 (which is on appeal to this Court as No. 191, October Term 1954) even though he had dissented in the *Panoma* case. Thus, a *majority* of the members of the Supreme Court of Oklahoma disagree with the application of federal law made by the judgment here appealed.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

1. The Order, as Applied to Appellants, Is Incompatible With the Jurisdiction of the Federal Power Commission Under the Natural Gas Act.

Two closely related questions are raised concerning the power of the Corporation Commission of Oklahoma to fix the price at which Phillips must sell residue gas to Michigan-Wisconsin or Panoma to Natural: (1) is such regulation consistent with the Federal Power Commission's jurisdiction over those sales under the terms of the Natural Gas Act, 15 U.S.C. §717, *et seq.*, and (2) is such regulation permissible under the Commerce Clause of the Constitution even in the absence of statute. Resolution of the first question against the exercise of jurisdiction by the state commission of course makes the second moot.

In *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, decided June 7, 1954, this Court held that Phillips is a "natural gas company" within the meaning of the Natural Gas Act, and that the sale of residue gas by Phillips to Michigan-Wisconsin—*one of the very sales here in issue*—is subject to the jurisdiction of the Federal Power Commission.[4] Nor was this Court unaware that conflicting state regulation existed. As the Court points out, even though there may be state regulation:

> "* * * the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control." 347 U.S. at p. 681.

---

[4] The decision of the Court of Appeals for the District of Columbia, *Wisconsin* v. *Federal Power Commission*, 205 F. 2d 706, was called to the attention of the state court in brief and oral argument, and this Court's opinion in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, was transmitted to the state court prior to its decision on rehearing. At no time was either decision referred to by the majority of the state court.

The state court's decision that the state commission could regulate the same sale that is subject to regulation by the Federal Power Commission is thus in direct conflict with this Court's holding that state regulation inconsistent therewith must fall.

The anomaly of the present situation is emphasized by the fact that the Federal Power Commission, on July 16, 1954, issued its Order No. 174 requiring Phillips and other companies affected by this Court's decision to file with the Commission their gas purchase contracts effective June 7, 1954, and prohibiting such companies from making any change in their contract prices effective on that date without filing applications with the Commission.

The direct conflict between the Federal Power Commission's authority over the sales here involved and that asserted by the Oklahoma Corporation Commission is even more clearly demonstrated by a decision of the Federal Power Commission issued July 30, 1954 in Michigan-Wisconsin's rate case, *In the matter of Michigan-Wisconsin Pipe Line Company,* Opinion No. 275. In that case, the Federal Power Commission held that in determining the cost of gas purchased by Michigan-Wisconsin, increased costs attributable to the specific minimum price order of the Oklahoma Corporation Commission here in question would not be allowed, stating:

> "To the extent that a portion of this gas was produced by Phillips, there is no justification for attributing to such volume any increase above the *established contract price* by reason of the Oklahoma minimum well-head price order in question." (pp. 6-7) (Emphasis supplied)

Thus, the Federal Power Commission has specifically held that Phillips may not lawfully charge Michigan-Wisconsin

more than the contract price for residue gas, the state commission's order to the contrary notwithstanding. A clearer conflict between state and federal regulation is difficult to imagine. This Court has specifically held, moreover, that by enacting the Natural Gas Act, Congress "pre-empted the regulatory powers over the transportation and sale of natural gas in interstate commerce." *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U.S. 456, 466. The state court's decision simply ignores that conclusion.

2. The Order, as Applied to Appellants, Is Violative of the Commerce Clause.

Even apart from the Natural Gas Act, the Commission's order fixing the price at which producer-processors of gas must sell residue gas to interstate pipeline companies was beyond its jurisdiction. There is no question but that the sales by Phillips to Michigan-Wisconsin and by Panoma to Natural at the outlets of the gasoline plants are sales in interstate commerce. Phillips conceded this fact in proceedings before the Federal Power Commission, and both this Court (347 U.S. at 677) and the Court of Appeals (205 F. 2d at 710) approved this concession.

If, then, the sales involved are sales in interstate commerce, may a state regulate the prices at which such sales may be made? The Oklahoma court held that it may. The Court of Appeals, in the decision in *Wisconsin* v. *Federal Power Commission, supra,* held categorically that it may not, stating:

> "The Commission finds that the sales involved here are sales in interstate commerce of natural gas for resale. That finding is not disputed. It follows that no state can regulate these sales. * * *" (Ibid 710)

Indeed, the fact that a state is forbidden to regulate sales of this kind by this Court's decisions in *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298, and *Public Utilities Commission* v. *Attleboro Steam & Electric Company*, 273 U.S. 83, was one of the motivations for enactment of the Natural Gas Act. See *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. at 682-684 and authorities cited.

Appellees and the court below relied upon this Court's decision in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, as authority for their position. In that case this Court upheld an order of the Corporation Commission of Oklahoma setting a minimum price for natural (raw unprocessed) gas sold *at the wellhead*, but in doing so the Court carefully limited its decision to the facts presented by the record, *Id.* at p. 189. That record showed that the gas purchased at the wellhead by Cities Service was subsequently gathered together by that company, the liquefiable components extracted and the residue then moved to a concentration point in Oklahoma where it was commingled with gas coming from other fields. *Only then* did a portion of the residue move in interstate commerce. It was under these circumstances—a sale made prior to processing and assembling for interstate transportation—that this Court held the sale to be subject to state price regulation.

In its opinion in the *Cities Service* case this Court relied upon the principles stated in *Parker* v. *Brown*, 317 U.S. 341, 361, in which state regulation of the price of raisins was upheld under the Commerce Clause on the ground that, since the state regulation there involved occurred "before they are processed and packed preparatory to interstate sale and shipment," the regulation was primarily of local concern. Here, however, the sale which the state commission seeks to regulate occurs *at the very mouth of the interstate pipeline*. See *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157. At the time of the sale the gas is

rushing into the inlet of appellants' pipelines for immediate and continuous transportation interstate. No further processing remains to be done; no further gathering or assembling lies ahead. Under the very terms of the *Cities Service* case and *Parker* v. *Brown*, therefore, regulation of the prices at which appellants purchase residue gas is of national, rather than local concern, and therefore forbidden to the states.

This national interest in freedom of the residue gas purchased by appellants from state price fixing regulations is further reflected in the fact that 90% of the gas produced in the Guymon-Hugoton Field is consumed in states other than Oklahoma, and *all* the residue gas purchased by appellants is so consumed. Thus, the facts here are exactly the reverse of the situation presented by *Milk Control Board* v. *Eisenberg*, 306 U.S. 346, cited in the *Cities Service* case. In that case it was considered of controlling significance that only 10% of the milk produced in Pennsylvania was transported from the state. The Court stated that there was a comparatively large field only remotely affecting and *wholly* unrelated to interstate commerce within which the statute operated and, therefore, that the effect of the law on interstate commerce was incidental. But here, 90% of the gas produced in the Guymon-Hugoton Field is consumed outside the state. The effect on interstate commerce is direct and immediate. The principal burden of the order necessarily falls on consumers in other states.

Moreover, the order here involved, judged by its operation and effect, is clearly *aimed* at interstate commerce. Regulation of price is effective only in the Guymon-Hugoton Field from which 90% of the gas produced is consumed in other states. The Corporation Commission has not attempted price fixing in other fields of the state from which only 10% of the gas produced is consumed in other states,

Oklahoma from this field, although a fluctuating figure, about equals the cost of gathering and the cost of processing; that in order for Phillips to obtain the equivalent of 9.8262 cents per thousand cubic feet at the wellhead for the gas which it produces it must receive 9.8262 cents for the residue gas after processing; that if Phillips does not obtain such price for residue gas but is forced to sell it at the price called for by its contracts with Panhandle and Michigan-Wisconsin such a loss would result that Phillips would be forced to close down its producing, gathering, and processing operations; that there is no other market for this gas; that if Phillips were forced to construct another processing plant inside the borders of Oklahoma the unit cost would be much higher than it is under the present arrangement whereby the same plants can process both Oklahoma and Texas gas; that the total cost of gathering and processing when deducted from the value received for the liquid hydrocarbons extracted leaves only a minute fraction of a cent for earning rate on the investment; that out of 1000 wells currently producing in this field gas is sold at the wellhead from only 141 of them and the remaining gas produced in this field by all companies is sold at points elsewhere than at the wellhead.

Cities Service Gas Company, Northern Natural Gas Company, and Natural Gas Company introduced stipulations outlining their respective operations and showing that they purchased both raw gas at the wellhead and processed gas and sold most of such gas in interstate commerce. The various contracts and amendments or modifications thereof between Phillips, Panhandle Eastern, and Michigan-Wisconsin were introduced in evidence.

The Commission entered its findings to the effect that since the date of its last order in 1947 fixing the minimum price of gas at the wellhead at 7 cents commodity prices

90% of the production being consumed in the state. The regulation, by its necessary operation, is a means of gaining a benefit for local producers "by throwing the attendant burdens on those without the state."[5]

One contention made by appellees in the state court deserves brief comment. They there asserted that the Commission's order does not violate the Commerce Clause because it does not "fix" the minimum price at which the interstate sale must be made but simply provides that "no gas shall be produced" at any well in the field unless it is then sold at a price no lower than that fixed by the order. Thus appellees argued that, while the Commission might not be able directly to set the price at which appellants must purchase gas, the Commission may place an embargo against production conditional upon the seller's obtaining that price.

Obviously the impact of the order, judged by its necessary operation and effect, is on the sale. When the raw gas is produced, gathered and processed those activities are lawful unless the *subsequent* sale of the residue is made at a price less than that fixed by the order. If sold at a lower price, the production that had theretofore been lawful becomes unlawful. Thus, while the prohibition is against production, that prohibition is nothing more than a sanction to enforce payment of the price fixed by the Commission for interstate sales. Constitutional guaranties may not be evaded in this manner. *Foster Fountain Packing Co.* v. *Haydel,* 278 U.S. 1; *Bailey* v. *Alabama,* 219 U.S. 219, 244.

It should be noted, in this connection, that the Federal Power Commission, by its Order No. 174 issued July 16, 1954, has forbidden Phillips and other companies which sell gas to interstate pipeline companies from suspending any

---

[5] *So. Carolina State Highway Dept.* v. *Barnwell,* 303 U.S. 177, 185 (fn. 2), 185-186.

in general and the use value of gas had so increased that the sale of gas from said field at any price less than 9.8262 cents measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch causes both physical and economic waste; that the taking of gas at the price now prevalent causes a less return to royalty owners and the State of Oklahoma, results in inequitable taking from the common source of supply and in discrimination against various producers in the field; that only a small portion of the gas produced in the field is actually sold at the wellhead; that much of the gas is gathered and liquid hydrocarbons extracted, the residue being sold at the conclusion of processing; that the value received by the processor for the liquid hydrocarbons extracted does not exceed the cost of gathering and processing the gas and represents a valuable service to the purchaser; that to realize a price equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead such producer and processor must receive for such residue gas a price of not less than 9.8262 cents; that to prevent waste, to protect correlative rights, and insure the greatest ultimate recovery of gas from the common reservoir gas should not be permitted to be taken from the structures of said field at a price less than 9.8262 cents; that a minimum price order cannot be made fully effective unless the manner in which producers of processed gas shall obtain such price is provided; and entered its order that no gas shall be produced from said field at a price less than 9.8262 cents per thousand cubic feet if sold at the wellhead or on the lease or drilling unit or a price equivalent to 9.8262 cents if sold off the lease or drilling unit or otherwise utilized; that the minimum price of gas sold at the conclusion of gathering but without extraction of hydrocarbons shall be 9.8262 cents plus the reasonable cost of gathering; and that processed or residue gas shall be sold at a price of not less than 9.8262 cents.

service provided by such sellers on June 7, 1954, without the approval of the Federal Power Commission. Thus, any attempt by Oklahoma to enforce its prohibition of production would squarely contravene the Federal Power Commission's order. Under the Natural Gas Act as under the Commerce Clause itself, therefore, a state may not attempt to prohibit or embargo the production of gas as a means of enforcing payment of a state-fixed price for interstate sales.

3. The State Court's Attempt to Rewrite the Gas Purchase Contracts Cannot Be Sustained.

In what can only be characterized as an attempt to evade this Court's decisions construing the Natural Gas Act and the Commerce Clause, the Supreme Court of Oklahoma apparently construed the contracts as not providing for sales of residue gas at the outlets of gasoline plants after production, gathering and processing have been completed (as this Court held in the Phillips case) but as providing for sales of the residue constituent of the gas while it is still a part of the raw natural gas in the underground formations, before production, before gathering and before processing.[6] This astounding conclusion, not urged by any of the parties before the Corporation Commission, is in conflict with unambiguous provisions of the contracts, with stipulations made by the Corporation Commission itself, and with the interpretation given the same contracts by this Court, by the Court of Appeals for the District of Columbia and by the Federal Power Commission.

The gas purchase contracts here in issue are not ambiguous as to where title passes. In Natural's contract with Panoma it is provided that:

---

[6] If, in fact, that were the proper interpretation of the contracts, the Commission's order would not even be applicable to such sales. The order does not purport to regulate the price of gas sold in the ground but applies only to residue gas when sold "*after* processing during or upon the conclusion of gathering."

The contentions of the various plaintiffs in error may be broadly grouped under three general propositions, each with several subheads and arguments which will be discussed in their proper place. These three propositions are: (1) that the order of the Commission is not predicated upon adequate findings and is not supported by the evidence; (2) that the order purports to regulate interstate commerce and imposes an unlawful embargo and restriction thereon; (3) the Commission has no power or authority, express or implied, to fix the minimum price at which residue gas, only one of the constituents of raw gas, shall be sold.

Under the first general proposition plaintiffs in error allege that the findings of the Commission are inadequate as basic findings of fact to support the conclusions expressed in the order as findings in that the Commission's finding as to the existence of physical waste is a final conclusion, not a basic fact finding; that the finding of physical waste is not supported by the evidence; that the finding of economic waste is not supported by the evidence; that the Commission cannot fix the price of commodity sold in interstate commerce merely to increase the profits of the sellers of such commodity; that the findings that under existing price there is loss to the royalty owners and the State do not justify the order; the order goes beyond the necessities of the case; the finding that the price now prevalent results in inequitable taking from the common source of supply is without support of adequate findings and evidence; the finding that the prevalent price results in discrimination against various producers is unsupported by findings of basic facts and the evidence; the finding that the production of gas is in excess of market demand is without foundation in findings of basic facts or the evidence; a mere finding that the order is for the prevention of waste, the protection of correlative rights, and in the interest of the state is not

> "A metering station to be installed by Natural * * * shall be located near the outlet of said plants *at which point title to the gas shall pass to Natural,* * * *" (Emphasis supplied.)

Michigan-Wisconsin's contract with Phillips provides that "The point of delivery of all gas delivered hereunder shall be at the outlet of the meter station * * *" and further provides that "Seller warrants unto Buyer the title to all gas delivered hereunder." Moreover, it was stipulated that:

> "Title to said gas so produced by Phillips does not pass unto Michigan-Wisconsin until it is delivered at the meter of Michigan-Wisconsin in Hansford County, Texas."

It is significant, furthermore, that never during the course of the long litigation culminating in this Court's decision in the *Phillips* case did Phillips or any other party so much as suggest that it sold residue gas at any point other than at the outlet of its gasoline plant. The opinion of the Federal Power Commission, 10 F.P.C. 246, the opinion of the Court of Appeals, 205 F. 2d 706, and this Court's opinion, 347 U.S. 672, all construe Phillips' contracts with Michigan-Wisconsin and Panhandle Eastern as sales at the outlets of gasoline plants. As this Court stated:

> "After processing is completed, the gas flows from the processing plant through an outlet pipe, of varying lengths up to a few hundred feet, to a delivery point where the gas is sold and delivered to an interstate pipeline company." (347 U.S. at 675.)

The one circumstance seized upon by the state court for its remarkable interpretation of the contracts was that Phillips and Panoma have "dedicated" certain of their leases to the fulfillment of their obligations under the contracts. Contract dedications are very common provisions which are

sufficient basis for the exercise of jurisdiction; the order purports to fix the earnings of gatherers and processors of gas which is beyond the scope of the Commission's jurisdiction; the order is a special order; there is no substantial evidence to sustain the finding that the minimum price for residue gas should be identical with the wellhead price for raw natural gas.

A review of the evidence outlined above demonstrates that none of these contentions are well founded. There is substantial evidence to the effect that the prevalent price of raw gas in this field (seven cents per thousand cubic feet as fixed by previous order) will not, under present economic conditions prevailing, such as cost of labor and materials, permit the drilling of wells in fringe areas, resulting in non-development of the field, migration of gas to wells in production to the loss of landowners in fringe areas, and incomplete exhaustion of the gas-bearing structures, all to the loss of landowners, producers, and the State of Oklahoma generally. Such facts constitute both physical and economic waste and amply justify the Commission's order on that factor. Certainly such facts clearly show inequitable taking from the common source of supply, irreparable harm to correlative rights of owners, loss to royalty owners, and loss to the state and are sufficient to sustain the interest of the state in correcting such abuses. This is a regulatory order based upon the interest of the State in conserving its natural resources; it is not an order designed merely to increase the earning of producers and processors. Such an order is a proper exercise of the state's police power. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279, affirmed 340 U.S. 179, 71 S. Ct. 215, 95 L. ed. 190. That it may have such effect is a mere incident.

The evidence that the value of the liquid hydocarbons extracted just about balances the cost of gathering and

required by the Federal Power Commission before it will authorize construction of a gas pipeline. They constitute an assurance that the pipeline has an adequate gas supply. The dedications simply prevent a sale of the dedicated gas to other purchasers. It had never been suggested, prior to the Oklahoma court's decision in the *Panoma* case (No. 191 in this Court), that the dedication itself constituted a sale of residue gas in the ground.

When substantial constitutional rights are asserted, this Court will exercise its own judgment as to both the facts and the law. When the holdings of a state court rest on an interpretation of a contract, this Court will itself interpret the contract to see if the decision "rests on a fair or substantial basis." *Broad River Power Co.* v. *South Carolina*, 281 U.S. 537, 540. And, while this Court will be inclined to accept a reasonable interpretation of a contract by a state court, that interpretation will be rejected if "manifestly wrong." *Southern Wisconsin Ry. Co.* v. *Madison*, 240 U.S. 457, 461; *New York Transit Co.* v. *New York*, 303 U.S. 573, 593. This case is a singularly appropriate one for application of that doctrine.

4. The Commission's Order Contravenes the Due Process and Contract Clauses of the Constitution of the United States.

The order of the Corporation Commission, apart from the impact of the Commerce Clause, violates the Due Process Clause of the Fourteenth Amendment in two respects: first, it is extraterritorial in its application to Michigan-Wisconsin, and second, its increase of the minimum price from 7¢ to 9.8262¢ per m.c.f. for natural gas and its requirement that appellants pay the same amount for the residue constituent thereof are arbitrary and unreasonable in the extreme. Furthermore, it abrogates contracts for no public purpose, but for the private benefit of the integrated producer-processors such as Phillips and Panoma.

(a) The order is extraterritorial in application.

As has been stated, the sale of residue gas by Phillips to Michigan-Wisconsin takes place, not in Oklahoma, but in Texas. Thus, the Oklahoma Corporation Commission seeks to extend its power to fix prices beyond the borders of the state. This, under recognized concepts of jurisdiction, it cannot do. *New York Life Ins. Co.* v. *Head*, 234 U.S. 149; *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430, 440.

Baldwin v. *Seelig*, 294 U.S. 511 presented an analogous situation. In that case New York attempted to prevent the sale within that state of milk purchased in Vermont unless the price paid to milk producers in Vermont was up to the minimum set by New York law. The Supreme Court quickly set at rest the question here presented. Mr. Justice Cardozo, speaking for the Court, said:

> "New York has no power to project its legislation into Vermont by regulating the price to be paid in that state for milk acquired there. So much is not disputed. New York is equally without power to prohibit the introduction within her territory of milk of wholesome quality acquired in Vermont, whether at high prices or at low ones. This again is not disputed." (294 U.S. at p. 521.)

A situation identical with that here presented was involved in *De Korte* v. *Du Mond*, 76 N.Y.S. 2d 750, appeal dismissed 298 N.Y. 695, 82 N.E. 2d 588, where New York's attempt to regulate the price of milk produced in New York but sold in Pennsylvania was held invalid. Cf. *Milk Control Board* v. *Eisenberg*, 306 U.S. 346 at 352.

(b) The order is arbitrary and unreasonable.

The Commission's order, as applied to appellants, violates the Due Process Clause of the Fourteenth Amendment in two other respects: (1) the increase of minimum prices from 7¢ to 9.8262¢ per m.c.f. is supported by nothing in the

record other than the pleas of royalty owners and producers to increase their receipts, and (2) the requirement that appellants pay the same price (9.8262¢) for the residue constituent of natural gas as is paid for the raw gas itself at the wellhead is arbitrary and unreasonable.

The order purports to be adopted for the prevention of waste. But there is no evidence as to the existence of physical waste of gas in any substantial amount. The only "waste" claimed to exist is the gas which escapes in the normal and routine drilling and "blowing" (cleaning) of gas wells, and it was undisputed that the quantities so blown to the air through these routine operations are insignificant.

The only claim that "economic" waste exists rests on the argument that in interstate markets served by appellants and other pipelines (such as Kansas City, Omaha, Chicago and Detroit), gas is sold to consumers at prices below the prices at which so-called "competitive" fuels (coal, oil, gasoline, etc.) are sold, based on B.t.u. equivalents. Whatever merit that argument may have for the consideration of those who purchase fuels in such markets, the fact, if true, does not mean that those producers who sell their gas at arm's length are guilty of committing economic waste.

In fact, the petition to increase the minimum price of gas was filed by a group of royalty owners, who paraded to the stand to complain that they were not receiving as much for their gas as they thought they should. References in the record to physical and "economic" waste are the thinnest facade for an attempt to increase the return to Oklahoma citizens at the expense of consumers of gas in other states.[7]

---

[7] This is highlighted by the fact that the Commission has fixed minimum prices for gas only in the Guymon-Hugoton Field of Oklahoma, from which all but a fraction of the gas goes to other states. No such price-fixing has been adopted in other gas fields, from which gas is used principally in Oklahoma. The regulation is thus directly aimed at interstate commerce and void for that reason. *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177.

Similarly, the Commission's action in fixing the price of residue gas at 9.8262¢ per m.c.f., the same price to be paid at the wellhead for raw gas, is wholly unreasonable.

(c) The order impairs the obligation of contracts.

Finally, the Commission's order results in the abrogation of contracts to the great private advantage of the producers and processors of natural gas but to no discernible public advantage, thus violating Article I, Section 10 of the federal Constitution. By the Commission's order Panoma receives an annual windfall of $1,108,505 on its sales to Natural alone, an increase over the contract price of 57%, while Phillips receives an annual windfall of $169,672 from Michigan-Wisconsin. These contracts were entered into in the utmost good faith by sellers and buyers experienced in the gas business. It is not contended that the contracts were not advantageous from the standpoint of both seller and purchaser, yet the price has now been raised far above that upon which the parties agreed and made their plans.

The Commission's order does not affect in the slightest degree the methods of extracting gas from the ground or the amounts that may be extracted by any producer. Its effect upon conservation of gas, which is the "public purpose" supposedly served by the order, is therefore nil. It does have the drastic effect, however, of transferring from the pockets of consumers of gas to those of a few producers, millions of dollars annually. Wholesale abrogation of contracts merely to benefit certain parties to the contracts can hardly be considered a public purpose in itself.

Although contract obligations must yield to the *proper* exercise of the police power, and vested rights do not inhibit the proper exertion of that power, yet (a) the power must be exercised for an end which is, in fact, public; (b) the means adopted must be reasonably adopted to the accom-

plishment of that end; and (c) the exertion must not be arbitrary or oppressive. *Treigle* v. *Acme Homestead Assn.*, 297 U.S. 189, 197. The order here involved, as applied to appellants, does not meet that test.

CONCLUSION.

Appellants respectfully suggest that these appeals, and one filed by Panhandle Eastern Pipe Line Company in a companion case, bring before this Court federal questions under the Constitution that are far-reaching and important, both in terms of legal principles and of practical impact upon the consumers of gas throughout the nation; and that enough has been said to demonstrate that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

JACK T. CONN
D. H. CULTON
COLEMAN HAYES
ARTHUR R. SEDER, JR.

Counsel for MICHIGAN-WISCONSIN PIPE LINE COMPANY

CLARENCE H. ROSS
CHARLES C. McDUGALD
WARREN T. SPIES
D. H. CULTON
COLEMAN HAYES

Counsel for NATURAL GAS PIPELINE COMPANY OF AMERICA

APPENDIX A

IN THE

SUPREME COURT OF THE STATE OF OKLAHOMA

NATURAL GAS PIPELINE COMPANY OF AMERICA, *Plaintiff in Error,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*	No. 35,731
MICHIGAN-WISCONSIN PIPE LINE COMPANY, *Plaintiff in Error,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*	No. 35,732
PANHANDLE EASTERN PIPE LINE COMPANY, *Plaintiff in Error,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error.*	No. 35,734

SYLLABUS

1. Under the regulatory power of the Corporation Commission for conservation purposes it can fix a minimum price which must be obtained for natural gas as a condition precedent to the taking of natural gas or any component part thereof from the structures. Such an order, even though most of the gas so taken from the structures will eventually be sold outside this state, does not place an embargo or unlawful restriction upon

interstate commerce, unlawfully impair the obligation of contracts or violate due process. The regulation is imposed before any movement in interstate commerce occurs.

2. Having fixed a minimum price as a condition precedent to the taking of natural gas from the structures, in furtherance of the power to regulate such taking for conservation purposes the Commission may require a producer who does not sell raw gas at the wellhead or one who processes such raw gas for the purpose of breaking it into component parts before delivery to obtain therefor a price equivalent to the fixed minimum price of raw gas at the wellhead. This is necessary in order to prevent discrimination and ensure that all producers will be regulated alike. In doing this it may prescribe a formula or method by which such producer may obtain such equivalent price. It is only necessary that such formula or method so established be reasonable and practically effective to carry out the purpose for which it is made.

3. Record examined and held: That the order of the Corporation Commission is based upon basic findings of fact and is supported by substantial evidence.

Certain mineral owners made application to have a minimum price fixed for gas produced in the Guymon-Hugoton natural gas field. Certain producers in said field protested such price fixing. From order of the Commission fixing the price of raw gas at the wellhead, the price of raw gas sold off the lease, and the price of residue gas after processing operations three producers, Panhandle Eastern Pipeline Company, Michigan-Wisconsin Pipeline Company, and Natural Gas Pipeline Company of America appeal. The three appeals are here consolidated.

AFFIRMED.

C. C. McDugald,
W. T. Spies,
D. H. Culton,
Coleman Hayes,
Attorneys for Natural Gas Pipeline Co. of America

Jack T. Conn,
D. H. Culton,
Coleman Hayes,
Arthur R. Seder, Jr.,
Attorneys for Michigan-Wisconsin Pipe Line Co.

Ross Rizley,
L. E. Tyron,
Orlando F. Sweet,
Edward H. Lange,
Mark H. Adams,
William I. Robinson,
Attorneys for Panhandle Eastern Pipe Line Co. for plaintiffs in error.

Cecil C. Hamilton, Oklahoma City, Okla.
Rayburn L. Foster,
Harry D. Turner,
R. M. Williams,
Kenneth Heady, Bartlesville, Oklahoma,
Attorneys for Phillips Petroleum Co.

Floyd Green,
Ferrill Rogers,
Attorneys for Corporation Commission

T. Murray Robinson,
Leon Shipp, Oklahoma City, Oklahoma
Vincent Dale, Guymon, Oklahoma,
Attorneys for Members of Texas County Land and Royalty Association for defendants in error.

ARNOLD, J.:

Certain mineral owners in Texas County, Oklahoma, filed an application before the Corporation Commission for an order determining the minimum price at which gas produced from the Guymon-Hugoton field may be first purchased or sold. Certain producers and purchasers of gas from said field filed their protests and responses. From the Commission's order fixing minimum price at which such gas may be sold Natural Gas Pipeline Company, Michigan-Wisconsin Pipe Line Company and Panhandle Eastern Pipeline Company have filed their separate appeals, here consolidated.

On behalf of the applicant mineral owners the evidence reasonably tends to show that the Corporation Commission by its order No. 19514 issued effective February 1, 1947, fixed the minimum price at which gas may be produced and taken from the structure in this field at 7¢ per thousand cubic feet; that since that date the price of all other industrial fuels has substantially increased; that comparing the other industrial fuels in most common use, such as coal, residual, crude oil, kerosene, and gasoline with gas on an energy content basis the fuel source cost of natural gas is about one third that of coal (the lowest in price per energy content unit of all the other industrial fuels) and the other fuels increase in cost per energy content unit to the highest, gasoline, which is almost fourteen times greater; that natural gas since 1938 has been lower in price in comparison to its heat energy content than any other fuel because gas has not been on a competitive market while the other fuels are and have been; that in 1950 natural gas supplied 20.94% of the total of mineral energy supplied, produced, and used as fuel in the United States and received only 5.16% of the total dollar income for all energies at their source; that in order to have the same

price differential between gas and other fuels as existed in 1947 when the former order of the Commission was entered the price of natural gas would have to be set at 12.64¢ per thousand cubic feet that to compare favorably with other industrial fuels the price should be 25 or 30 cents per 1000 m.c.f.; that increasing the price of gas as taken from the structure would tend to conserve gas and prevent physical waste in that the higher price would allow wells in fringe areas of the field to be drilled and operate at a profit whereas if a price increase is not given such wells cannot economically and will not be drilled resulting in non-development of the field, loss to the owners in such fringe areas and damage to their rights in the common source of supply; that better and more expensive methods of production would be economically feasible which would tend to conserve gas and eliminate the necessity of blowing out the wells to clean them; that the entire Hugoton field is a single reservoir extending from the Texas panhandle across Texas County and into Kansas; that if the fringe wells are not drilled the gas will migrate to existing wells, causing loss to the fringe owners; that the higher price is necessary while marketing facilities are available and if fringe wells were not drilled until the rest of the field was abandoned very little gas would be left in the reservoir and there would be no marketing facilities available therefor; that about 99% of the gas produced in the Guymon-Hugoton field is transported out of the state of Oklahoma; that the land owner who owns a quarter section of land gets approximately $1 per day on the average well royalty; that the field as a whole is producing more gas than it did five years ago but the individual wells are producing less; that gas of the same quality is sold by different producers in this field at prices varying from the 7¢ minimum now in effect to 9.95781¢; that none of the mineral owners were consulted as to the price they

would receive for their gas and that they are dissatisfied with the prices they are receiving and want a uniform price throughout the field; that since 1946 there has been a tremendous increase in the demand for natural gas as a fuel and the costs of production have likewise materially increased; that since the 7¢ minimum was fixed several contracts for gas have been negotiated at a price of 9.8¢ per thousand cubic feet; that to protect the interest of the State of Oklahoma a price for gas in Oklahoma should be fixed which would produce the maximum revenue consistent with the policy of maintaining the markets; that a price of 9.8262¢ would not affect the market, would allow thin acreage to be developed and produced preventing migration and allowing full development of the field, thus protecting the correlative rights of the owners.

Over the objection of other producer respondents in the hearing Phillips Petroleum Company was allowed to introduce evidence which reasonably tends to show that in the Guymon-Hugoton field it is primarily a producer of gas from its own wells and leases; that it does not sell its gas at the wellhead but, under commitment of long term contracts with Michigan-Wisconsin Pipeline Company and Panhandle Eastern Pipeline Company it gathers the gas which it produces in its own gathering lines, moves the gas to its two processing plants, one in Hansford County and the other in Sherman County, Texas, about a mile and a quarter south of the Oklahoma line, and there removes liquid hydrocarbons and delivers the dry or residue gas to said companies; that in addition to the gas which it produces Phillips has contracts with certain other producers by which it purchases gas at their wellheads which gas it gathers processes and sells in the same manner as the gas from its own wells and leases; that the production from its own leases is 14% of the total production of the field and the gas it purchases is 4.4% of the field total,

making a total of gas which it produces or purchases of 18.4% of the field total; that the geographical location of the processing plants across the state line is a mere incident, they being so located because the site is more centrally located in respect to Phillips' gathering operations in both Texas and Oklahoma; that the value of the liquid hydrocarbons extracted from the raw gas by Phillips in these plants varies with market conditions as does the cost of gathering the gas; that in the process of gathering and extraction some of the gas is used for fuel purposes and some is lost through shrinkage; that after allowing depreciation to date Phillips has invested in the Hansford and Sherman plants and the gathering systems serving them in excess of 19 million dollars; that all of the gas produced and purchased by Phillips in this field is sold after the extraction of liquid hydrocarbons as residue gas elsewhere than at the wellhead; that the acreage from which it produces and purchases gas is dedicated for the life of the production to the performance of its contracts with Panhandle and Michigan-Wisconsin; that after processing at these plants at Hansford and Sherman the residue gas is delivered into the interstate pipelines of these two companies; that the contracts with both Panhandle and Michigan-Wisconsin provide in great detail as to how the gas shall be processed and the constituents and heat energy content of the residue gas delivered to them; that besides Phillips only Panoma and Plains Natural Gas Company produce, gather, and process their own gas in this field and sell it in interstate commerce; that Phillips is the only company in the field that both buys gas at the wellhead for processing in addition to processing its own gas; that the gathering and processing of the gas produced in Oklahoma is part of one continuous overall production; that the value of the products extracted from the gas in

processing the raw gas is uncontradicted. Certainly such processing constitutes a valuable service to the purchaser. The contracts introduced in evidence are very precise as to exactly what constituents shall remain in the residue gas contracted for. To have any regulation at all, to insure that all gas produced from the structures in this field shall be sold at the same minimum price it was necessary to fix the price of residue gas and the evidence is substantial to show that such price must be the same as that of raw gas to attain this end. See *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 71 S. Ct. 221, 95 L. ed. 204.

The findings of the Commission are supported by basic facts and the order of the Commission is based on substantial evidence.

Under the second and third broad groups of contentions plaintiffs in error claim that the order fixing the price of residue gas places a burden upon interstate commerce; that such residue gas is dedicated and destined for interstate movement even before the production of the natural gas of which such residue gas is a constituent; that there is a steady, uninterrupted flow from the wells to the gathering system through the processing plant into the pipeline systems and ending at markets in states outside Oklahoma; that such order was not made in any economic interest but for the interest of those producers who also process gas before delivery, and thus imposes an embargo and unlawful regulation on interstate commerce, is arbitrary and discriminatory; the order constitutes an unwarranted and unnecessary invasion of property rights under the guise of the exercise of the police power and deprives plaintiffs in error of their property without due process of law; the order impairs the obligation of contracts, takes plaintiffs in error's property for private use; there is no local interest which outweighs

the national interest in burdening gas sold interstate with state price-fixing regulations; the Commission seeks by this order to exercise extraterritorial jurisdiction; the price fixed for residue gas is not supported by substantial evidence. The order of the Commission fixing a price of 7 cents per thousand cubic feet at the wellhead in the Guymon-Hugoton field was involved in the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co., supra, Phillips Petroleum Co.* v. *Oklahoma, supra,* and *Natural Gas Pipeline Co. of America* v. *Panoma Corporation, et al.,* not yet officially reported, 24 Oklahoma Bar Journal 1393, ...P. 2d .... The same field and the same parties as here were involved and the same arguments were made and the same authorities cited in support thereof as here. These cases are decisive of the point that the Commission under its regulatory power for conservation purposes has the power to fix a minimum price as a condition precedent to the taking of natural gas from the structures; that such minimum price does not place an embargo or unlawful restriction upon interstate commerce, unlawfully impair the obligations of contracts, or violate due process. And as said in the *Phillips Petroleum Company* case, *supra,* by the United States Supreme Court, the Commission may order a producer such as Phillips who does not sell raw gas at the wellhead to obtain the equivalent of the fixed minimum price when the gas is sold after processing, because the Commission must be able to regulate the operations of all producers or there is little point in regulating any.

The only new question presented here is: may the Commission establish a method or formula by which it can be ascertained whether a producer who does not sell raw gas at the wellhead obtains *the* equivalent of the fixed minimum price of raw gas as taken from the structures? And if so and to implement the obtaining of such equivalent price can

the Commission add to the cost of raw gas which is not processed before sale but is sold off the lease the reasonable cost of gathering, or in case the raw gas is processed for the removal of liquid hydrocarbons before actual delivery to the purchaser, fix the price of the residue gas being only one constituent of the raw gas, so delivered?

Appellants concede that under their contracts the residue gas which they purchase is dedicated to the fulfillment of such contracts even before the production of the natural gas of which such residue gas is a constituent is produced and that such gas can be sold to no one else. This, of course, amounts to a sale of the residue gas in place; the sale is made before any movement of any kind starts and before anything in the nature of interstate commerce occurs, regardless of the acts required to be performed before the residue gas is separated from other constituents of the raw gas and regardless of the point of delivery to the purchaser. As said in *Natural Gas Co.* v. *Panoma, supra,* the processing of the raw gas amounts to a manufacturing operation and represents a valuable service to the purchaser. Under their contracts purchasers are able to buy a manufactured product for which they have a ready sale without necessitating large investment in processing equipment to make the raw product salable.

It seems self-evident and axiomatic that if the Commission has the power to regulate by fixing minimum prices it has the power to establish the formula and method by which it may be ascertained and determined whether all producers in the field are obtaining such minimum price, as it is their inescapable duty to do. It is only necessary that a formula or method so established be reasonable and practically effective to carry out the purpose for which it is made. Under the evidence here it is clearly shown that the market for liquid hydrocarbons is a competitive and fluctuating one. It

would seem highly impractical to attempt to fix a price for any one or all of such liquid hydrocarbons. It is also shown that by the very nature of natural gas its market is fixed and stable and amounts almost to a monopoly in a limited way; that because of the great expense and investment necessary for adequate distributing lines for moving the gas to the ultimate user a seller of residue gas must have a dedicated and guaranteed source of supply and franchise for more or less exclusive sale. Such requirements of course, keep the sale of residue natural gas as a fuel off a competitive market to a great extent.

The evidence shows that the average return over a long period from the sale of the liquid hydrocarbons extracted from the raw gas just about balances the cost of gathering and processing; sometimes the sale amounts to more and quite often amounts to less. As a practical matter it seems that the only feasible method to carry out the purpose of the Commission in regulating the taking of natural gas from the structures by all producers, regardless of their particular mode of operation, would be to fix the price of the residue gas, which is the only fairly stable constituent of raw gas.

All parties concede that under the cases cited above the Commission can fix the price of gas as taken from the structure. If it can fix the price of the whole it can fix the price of all of the parts constituting the whole. If it is not practically feasible to fix the price of all the parts constituting the whole it can fix the price of that constituent which can be controlled, provided it does it in a reasonable manner and so that the overall purpose is carried out. Under the evidence it seems that the Commission established the only formula which it could establish that would be workable and not be discriminatory or arbitrary. Under the formula established the producer who sells raw gas without process-

ing off the lease obtains the minimum price plus the reasonable cost of gathering; mere arithmetical computation shows that only by adding the cost of gathering to the minimum price can such a producer obtain the equivalent of such minimum price at the wellhead. The same thing is true as to residue gas. As it is shown that the liquid hydrocarbons counterbalance the cost of gathering and processing (which as above stated represents a valuable service to the purchaser) the only practical way to ensure that a producer who processes raw gas before actual delivery thereof to the purchaser will obtain the equivalent price of raw gas at the well head is to fix the price of residue gas as the same price of raw gas. As a practical matter this allows the purchaser of residue gas to receive a manufactured and processed product for which he has a sale at the same price he would have to pay for the raw product. If, for example, a furniture dealer could obtain finished furniture for sale at the same price he could obtained unfinished lumber he would think he had a rare bargain. The point of delivery of the finished product is a mere incident. The sale is made before anything in the nature of interstate commerce occurs. The order thus has no extraterritorial effect.

We think the Commission has the power to fix the price of residue gas as a necessary incident, under the facts shown in this record, to the regulation of the sale of raw gas as taken from the structures, and the formula and method established is both reasonable and practical.

The order of the Commission is based upon basic findings of fact and is supported by substantial evidence.

AFFIRMED.

JOHNSON VCJ. and WELCH, CORN and ARNOLD, JJ., concur.
WILLIAMS, J. concurs by reason of *stare decisis*.
HALLEY, CJ. and DAVISON, O'NEAL and BLACKBIRD, JJ., dissent.

Nos. 35731, 35732 and 35734 (Considered as Consolidated).

NATURAL GAS PIPELINE COMPANY OF AMERICA vs. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY.

BLACKBIRD, J., Dissenting:

I cannot agree with the views expressed in the majority opinion.

The price-fixing part of the Order involved herein is as follows:

> "IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, as follows:
>
> 1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, *or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.*"

It will be seen from the above that the Order purports to fix the price of gas at three different stages, namely:

(1) Raw gas at the wellhead;

(2) Raw gas "sold off the lease or drilling unit or otherwise utilized" including that sold at the conclusion of gathering and before processing, and

(3) Residue gas (the residue of raw gas *after* it has been processed).

As to (1) above, there can be no question as to the validity and constitutionality of the Order in view of the decision of this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279, and the decision of the United States Supreme Court on that case's appeal. See *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, 71 S. Ct. 215, 95 L. Ed. 190. However, as to (2) and (3) I think the Order is invalid and unconstitutional.

Each of the respondent companies is a "Natural Gas Company" as that term is defined in the *Natural Gas Act*, 52 Statutes 821, 15 U.S.C.A., Secs. 717, *et seq.* All are foreign corporations operating gas pipe line transportation systems traversing state lines and transporting residue gas derived by processing raw gas. Substantially all of this residue gas is transported through Respondent's interstate pipe lines and sold as fuel in various northern states. Such gas transportation is performed under authority of certificates of public convenience and necessity issued to said Respondents by the Federal Power Commission and the selling of that gas in those states is likewise under the exclusive jurisdiction of that body. When the raw gasoline arrives at Phillips' two Texas plants for processing, it has already been commingled in Phillips' Texas-Oklahoma pipe line system with other raw gas produced in Texas. Michigan-Wisconsin's purchases from Phillips are made under a contract specifying a certain price therefor, entered into by and between said parties on December 11, 1945, with amendments later made.

The Panhandle Company's pipe line system extends directly from producing areas in Oklahoma, Texas and Kansas to Missouri and other states north and east, where the gas it transports is sold at wholesale, both to utility companies for resale and to industries in those states for their own use. Part of this gas is derived from Panhandle's own wells in Oklahoma, and part is purchased from other producers.

All of the respondents maintain that Order No. 26096 is an unconstitutional assertion of power by the Corporation Commission in so far as it purports to fix the price of residue gas, and raw gas, after it has left the wellhead and lease or drilling unit where it is produced and enters an interstate pipe line system for resale in other states. Only Natural argues that the Order as a whole, including the part applicable to wellhead gas, is invalid or not justified by the evidence. As I consider the Order separable as applied to the gas in its three classifications above named, and, as I note that under the stipulated facts, Natural is not a purchaser of wellhead or raw gas, if Order No. 26096 had been reversed only as it purports to apply to gas other than at the wellhead, Natural would then have no rights impinged, as the price it is paying Panoma for residue gas under its present contract presumably would not be directly affected or disturbed. In that situation, the questions Natural raises as to the wellhead gas price fixing feature of the Order would become merely abstract or hypothetical ones, and not subject to review on specifications of error by this party not shown to be then affected by it. See *Patterson* v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 P. 2d 83; *Emrick* v. *State Highway Commission*, 147 Okla. 252, 296 P. 412; *Swan* v. *Home Savings & State Bank*, 148 Okla. 42, 297 P. 250; *In re Stewart Bros.*, 53 Okla. 153, 155 P. 1124; 2 Am. Jur., "Appeal and Error,"

Sec. 152. I will therefore reserve opinion on that part of Natural's argument and consider now only its argument directed at the "non-wellhead" portions of the Order, together with those of the other protestants, which on those phases are substantially the same.

As the order purports to fix the price of raw gas at the conclusion of its gathering beyond Oklahoma's territorial limits, or after it has gotten into an interstate pipe line, and purport to fix the price of residue gas, respondents say:

> (1) The findings and Order of the Commission are not supported by substantial, competent evidence;
>
> (2) The Order is beyond the constitutional and statutory power of the Commission and, as applied to protestants, violates,
>
> (a) Sections 7, 15, 23, and 24 of Article II of the Oklahoma Constitution, and Section 10, Article I, and the Fourteenth Amendment of the U. S. Constitution, by taking their property and valuable property rights without due process of law, without just compensation, and without a justifying public purpose or reciprocity of advantage, and denies them equal protection of the law,
>
> (b) and violates Section 8, Article I of the U.S. Constitution by placing an unlawful embargo on interstate commerce.

In so far as Order No. 26096 purports to apply to the gas after it is received into interstate pipe lines and is sold for immediate transportation and resale in other states, I think its invalidity is settled by *State of Wisconsin* v. *Federal Power Commission* (U.S. Ct. App. D. C.) 205 Fed. 2d 706. The opinion promulgated therein demonstrates, with the ample support of the previous U. S. Supreme Court decisions cited therein, that gas sales, in no

respect (affecting their interstate character) different from those in the present case, are interstate commerce, and cannot be regulated by any state; and that the exemption of "production or gathering of gas" contained in the Natural Gas Act, *supra,* does not extend to sales made after production and gathering have been completed. There is no direct conflict between this decision and previous decisions of our own Court. There is little, if any, disagreement among the litigants herein as to the principles of constitutional law that apply. The only conflict or joinder of issues in their argument seems to center around their divergent interpretations of Order No. 26096. Thus they agree that under the weight of authority, including *Cities Service Oil & Gas Co.* v. *Peerless Oil & Gas. Co., supra,* extension of the state's police power to price-fixing can be constitutionally justified only on the basis of a public purpose or protection of the public interest, such as gas conservation. But proponents of the Order seek to interpret and justify it as a conservation measure. Therefore, let us analyze the present order as tested by the principles laid down by our Court in the Cities Service Case. The material ones, as expressed in the syllabus of our opinion, are as follows:

> "1. The grant of power to the Corporation Commission under 52 O.S. 1941, § 239 to regulate the *taking of natural gas from a common source of supply* 'so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom,' by necessary implication includes the power to employ such means as may be *reasonably necessary* to the accomplishment of the declared purposes and includes the power to fix a price consideration in the *taking* of gas when found necessary to the attainment of such ends.
>
> 2. The provisions of 52 O.S. 1941, § 233, give the Corporation Commission authority to fix the price at

which natural gas may be *produced and taken from the field,* under the circumstances and in the manner therein stated.

3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an *unnecessary and unwarranted interference with individual liberty.* A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.

* * *

5. The commerce clause of the Federal Constitution does not preclude the state in the protection of local interests from fixing a uniform minimum price consideration *as a condition of the taking* of natural gas from a common reservoir because a producer therefrom will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed *before* the operation of interstate commerce occurs." (Emphasis added).

As shown in the above quotation, our upholding of the gas price-fixing Order involved in that case, was based, at least in part, upon the following considerations:

(1) That the Order was a *reasonably necessary* means to the accomplishment of the declared purpose of the Corporation Commission's statutory grant of power to prevent waste and protect correlative rights in a common source of gas supply;

(2) That price control is unconstitutional only when it is an *unnecessary and unwarranted interference with* individual liberty;

(3) That such an order does not violate the Commerce Clause of the Federal Constitution when it fixes a uniform minimum price as a condition of *taking the gas from a common reservoir* and takes effect *before* the gas gets into interstate commerce.

When weighed in the light of the above tests, I think the order in question must be found wanting. After examining the provisions of the Order purporting to fix the price of residue and raw gas away from the well or field or at the conclusion of its gathering, and weighing their effect and operation, as applied to the situation here and the rights of all concerned, I do not see how they can be justified as a conservation measure. In the 14th paragraph of its finding, the Commission found:

> "That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants."

This is obviously an incomplete sentence and finding, but if it was intended to say by it that fixing a price for residue gas and raw gas away from the well or field is reasonably necessary to the effective and indiscriminate operation of the order, I do not agree. It was not shown that any of the wells in the Guymon-Hugoton Field are without gauges at their wellheads or that it is necessary to fix the price at any other point in order to accomplish the only legally justifiable purposes of such an order. There is no substantial evidence in this case to detract from the conclusion that the purposes of conservation are served when the taking from the gas sand is regulated at the wellhead by fixing the price right there—and before it gets into interstate pipe lines and is commingled with gas from other states, as was shown to occur before some of it arrives at Phillips' plants in Texas. Of course, Phillips' evidence was calculated to show that it and other gatherers and processors similarly situated had a problem of determining whether or not they were receiving for residue gas the equivalent of the Commission-fixed price for raw gas at the wellhead. This same

problem is said to have been presented to the United States Supreme Court in *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 71 S. Ct. 221, 95 L. Ed. 204, as evidenced by the following excerpt from that Court's opinion:

> "Phillips also relies heavily on the contention that the orders are unreasonably vague. In substance, this argument is nothing more than that the determination by an integrated company of proceeds realized from gas at the wellhead involves complicated problems in cost accounting. These problems are common to a host of valid regulations. There is nothing to indicate that Phillips will be penalized for reasonable and good faith efforts to solve them."

In both of the above cases and the *Cities Service Co.* case, *supra*, it was demonstrated that an order fixing a wellhead price applies to all and discriminates against none. While this may not be the only way to prevent waste and preserve correlative rights by price-fixing, it appears to be the best plan that has come before this court. Contrary to the impression the majority opinion seems to leave, the *Phillips* case, *supra*, furnishes it no support. While it is true that the Court therein recognized that the Commission must be able to fix the price for all *producers* or there is no point in trying to fix the price for any, it rejected Phillips' claim that a wellhead price could not be uniformly and indiscriminately enforced. And it must be borne in mind that the Orders there involved attempted no more than to fix the price of raw gas at the wellhead, as distinguished from a residue or by-product processed *in another state and there* sold in interstate commerce. It was specifically stated in that opinion: "Appellant does not argue that the orders violate the Commerce Clause, art. 1, §8, cl. 3."

The price fixed in the objectionable portions of the order here presented would not operate indiscriminately. True,

the order might readily solve Phillips' accounting problems. If completely effective, it might even furnish Phillips legal justification and exoneration for not living up to its contracts for the sale of residue gas made in prior years and specifying prices which now may seem unfavorable to it, yet it would discriminate against those who do not have the pipe line and processing facilities Phillips possesses. Granted that residue gas, or raw gas with gasoline and hydrocarbons removed, is more valuable for fuel purposes and to fuel consumers and distributors than the gas as it comes from the well in its natural state and that such gas should command a better price from such purchasers (being processed and ready for their use) these facts are immaterial, or at least of minor or secondary importance, to the primary question: Is it necessary for the Commission to guarantee to a processor its cost of gathering, or in the instance of residue gas, that cost, plus the cost of processing, in order to accomplish conservation of the State's natural gas resources? If so, this was not established by the evidence despite the statement to the contrary contained in the majority opinion. No attempt was made to show that gas from the Guymon-Hugoton Field would not have a market or that economic or physical waste of such resource would result if gatherers of gas in the field were not thus guaranteed their cost of gathering over and above the wellhead price. In this connection, I challenge any and all to show me proof in the present record that Phillips is actually losing money on its operations, or (as said in the majority opinion) "that if Phillips does not obtain" the price fixed by the order in question "for residue gas but is forced to sell it at the price called for by its contracts with Panhandle and Michigan-Wisconsin such a loss would result that Phillips would be forced to close down its producing, gathering and processing operations; * * *." As hereinbe-

fore noted, Phillips attempted to show by its interdepartmental system of cost accounting, and the Commission found, that the "value" of the liquid hydrocarbons extracted from the raw gas does not exceed the cost of processing and gathering it, "including a reasonable allowance for depreciation and return on investment. * * *" But I say that even if, on the basis of applicable law and substantial evidence, such a guaranteed profit to such processors might conceivably be justified as a conservation measure, it is discriminatory, and the discrimination is in favor of those situated as is Phillips. By guaranteeing such companies the same minimum price for residue gas as raw or wellhead gas, the order gives them either: *one* highly marketable product (residue gas) free of cost for gathering and processing (if such cost is charged to its processing or refining department), or *more* marketable products free of such costs, such as gasoline, carbon black and other hydrocarbons (if the gathering and processing is charged against the residue gas as a part of the cost of marketing it). Other purchasers buying gas at the wellhead would not have the advantage of this "two-way guarantee," but after purchasing the gas there, are "on their own" as regards paying their costs of gathering and marketing it. Another and second discrimination which is more patent on the face of the Order is that it purports to require the producer or lessee who sells gas after it is "gathered," but before it is processed, to obtain for it, in addition to the wellhead (and residue price) of 9.8262 cents per thousand, an extra added premium which the Order calls: "the reasonable cost of gathering." Aside from the controversies such an order will engender over the question of when or at what point gas can be said to be "gathered" within the meaning of that term as used in the order, this provision discriminates in favor of those owners of mineral rights who derive their

producing royalty income from lessees or producers who sell gas at the conclusion of gathering, and against those who derive their income from producers in the other two catagories, that is, (1) Those who sell nothing but raw gas at the wellhead, and (2) Those who make no sale of gas until after it is processed and becomes residue gas. The majority opinion reflects that there is some wastage and shrinkage between the wellhead and the gauges at the processing plants. How will the royalty owners under leases owned by Phillips get paid for as many cubic feet of gas as the royalty owner under leases producing gas that is sold at the wellhead? Will these royalty owners get paid on the basis of the number of cubic feet of raw gas that pass through the gauges at the wellhead, or will they be paid on the basis of the number of feet of residue gas that pass through the gauges at the processing plant? To me, the above considerations not only demonstrate that the order in question is discriminatory in more than one respect, but also, that by it, the Commission is about to launch an unlawful and dangerous invasion of the field of private enterprise, or "individual liberty" (as expressed in the *Cities Service* case, supra) without the justification of necessity for conservation purposes. If this Body's fixing of the price of residue gas can be justified on the grounds of conservation, as different a product and as far removed as it is from the natural gas that is the resource to be conserved, then I see no reason why that Body cannot also fix the price of gasoline, carbon black, and other products or commodities refined and/or manufactured from natural gas.

The record reveals that before the last of the protracted series of hearings in this case the Commission, through its Chairman and its attorney, expressed grave doubt, or at least serious misgivings, as to whether a price-fixing order for anything but raw gas at the wellhead could be legally

or constitutionally justified as a conservation measure. This makes it doubly surprising and somewhat imponderable to find that after delaying its decision several days after the last hearing, the Commission, on the basis of the weak and biased evidence presented by no other company than Phillips, signed substantially the same kind and form of order that Phillips' attorneys had previously drawn and exhibited to the Commission earlier in the hearings.

On the basis of the foregoing views, it is my conclusion that Order No. 26096 is valid in so far as it sets a price for natural gas at the wellhead, but is invalid in its other price-fixing aspects. Accordingly, I think the Order should have been affirmed in part and reversed in part. To that extent, and for the foregoing reasons, I dissent to the opinion of the majority.

APPENDIX B

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an Order Determining the Minimum Price at Which Gas Produced from the Guymon-Hugoton Field May Be First Purchased or Sold.	Cause CD No. 3628 Order No. 26096

REPORT OF THE COMMISSION.

This cause came on for hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 20th and 21st days of February, 1952, at 10 o'clock, a.m., at which time all Commissioners were present and the case was heard.

The case was then continued to various dates and was finally heard on July 8th and 9th, 1952, and at the conclusion of the testimony on July 9th all parties announced that they had rested, the case was closed, and the matter was taken under advisement.

At all hearings the following appearances were entered: Rizley, Tryon and Sweet, E. H. Lange and C. H. Hinton appeared for Panhandle Eastern Pipe Line Company; R. M. Williams, Kenneth Heady and Cecil C. Hamilton appeared for Phillips Petroleum Company; Mark Adams appeared for Northern Natural Gas Company, C. C. Kuhne, Coleman Hayes, D. H. Culton, Warren T. Spies, B. M. Britain appeared for Natural Gas Pipeline Company; T. Mur-

ray Robinson and Dale & Dale appeared for applicant; L. T. Cramer appeared for Office of Price Stabilization; Joe Rolston and R. R. McCracken appeared for Cities Service Gas Company; Floyd Green, Conservation Attorney and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

Now, on this the 29th day of July, 1952, the Commission being in executive session, the matter comes on for further discussion and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the extent hereinafter set out and therefore finds as follows:

FINDINGS.

1. That this is an application of certain mineral owners in Texas County, Oklahoma, for an order determining the minimum price at which gas in the Guymon-Hugoton Field may be first purchased or sold.

2. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law; that the cause was regularly set for hearing, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

3. That various interested parties have filed responses to the application and answers, some of which were filed during the course of the proceedings and some of which by leave of the Commission were filed since the proceedings were closed.

4. That Mr. L. T. Cramer of the Office of Price Stabiliza-

tion appeared and stated the position of that Federal Agency in respect to the application.

5. That under date of December 9th, 1946, the Commission issued its Order No. 19514, in Cause CD No. 1954, fixing the minimum price of 7¢ per thousand cubic feet of natural gas measured at a pressure base of 14.65 pounds absolute pressure per square inch for all gas taken out of the structures or formations in the Guymon-Hugoton Field, Texas County, Oklahoma; that said order was appealed to the Supreme Court of Oklahoma and the Supreme Court of the United States, both of which courts upheld the order of this Commission fixing said price and upheld the jurisdiction of the Corporation Commission to fix the price of gas in this particular field for the purpose of conservation and the protection of correlative rights.

6. That since the Commission issued its Order No. 19514, the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch, constitutes and causes waste, both physical and economic.

7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevalent in said field results in and causes:

a. Economic waste of a great natural resource, to-wit: natural gas;

b. Actual physical waste of natural gas;

c. Loss to the royalty owners in said field;

d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;

e. Inequitable taking of natural gas from the common source of supply involved.

f. Discrimination against various producers in the field.

8. That the production of natural gas in the Guymon-Hugoton Gas Field is in excess of the market demand.

9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that the price of 7¢ for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

10. That the representative of the Office of Price Administration stated in the record that a wellhead price for gas in said field of 9.8262¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch will not violate the orders of the Office of Price Administration.

11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable serv-

ice to the purchaser, in that said processing conditions said gas for pipe line transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial investments and incur substantial expenses in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment; and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F.

12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field, but that residue gas having less than 950 BTU per cubic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such residue gas should be in the proportion that the BTU content of such gas bears to 950 BTU per cubic foot.

13. That for the purpose of preventing waste, economic

and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton Field, at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants.

ORDER.

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of

gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic feet.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29th day of July, 1952.

CORPORATION COMMISSION OF OKLAHOMA

S/REFORD BOND, *Chairman*
S/RAY O. WEEMS, *Vice-Chairman*
S/RAY C. JONES, *Commissioner*

ATTEST:

S/TOM MCMURRAY
Secretary

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
SEP 20 1954
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 320

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

JACK T. CONN
D. H. CULTON
COLEMAN HAYES
ARTHUR R. SEDER, JR.
Counsel for
Michigan-Wisconsin
Pipe Line Company

CLARENCE H. ROSS
CHARLES C. McDUGALD
WARREN T. SPIES
D. H. CULTON
COLEMAN HAYES
Counsel for
Natural Gas Pipeline
Company of America

INDEX

SUBJECT INDEX

PAGE

1. Appellees Do Not Defend The Holding Of The State Court 2
2. The Controlling Effect Of The Opinion In Phillips v. Wisconsin 3
3. There Is No Place Under The Commerce Clause For Dual Price Regulation 5
4. The Order Is a Regulation Of Sales, Not Production 6
5. The Constitutional Questions Were Presented To And Considered By The State Court 8

Table of Cases Cited

Bethlehem Steel Co. v. N. Y. Labor Rel. Bd., 330 U.S. 767 5

Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1 7

Hood v. DuMond, 336 U.S. 525 ..... 5, 7

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 ..... 2, 3

Michigan-Wisconsin Pipe Line Co., In the Matter of .. 5

Napier v. Atlantic Coast Line R.R. Co., 272 U.S. 605 .. 5

Northern Natural Gas Co. v. Federal Power Commission, 206 F. 2d 690 ..... 5, 7

Pennsylvania v. W. Va., 262 U.S. 553 7

Phillips Petroleum Co. v. State of Wisconsin, 347 U.S. 672 ..... 2, 3, 4, 5, 6

Public Utilities Commission v. Attleboro Steam & Electric Company, 273 U.S. 83 3

Public Utilities Commission v. United Fuel Gas Company, 317 U.S. 456 4

Toomer v. Witsell, 334 U.S. 385 7

West v. Kansas Natural Gas Co., 221 U.S. 229 7

Wisconsin v. Fed. Power Com., 205 F. 2d 706 8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 320

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET. AL.,
Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

Michigan-Wisconsin Pipe Line Company (Michigan-Wisconsin), appellant in No. 320, and Natural Gas Pipeline Company of America (Natural), appellant in No. 321, file their joint brief in opposition to Motion to Dismiss by appellee Phillips Petroleum Company (Phillips) and Motion to Dismiss or Affirm by appellees The Corporation

Commission of Oklahoma (the Commission) and Certain Mineral (Royalty) Owners filed in Nos. 320, 321 and 322.

1. Appellees do not Defend the Holding of the State Court.

Significantly, neither Motion reflects any effort to defend the basis upon which the Supreme Court of Oklahoma (the State Court) decided the case in favor of appellees. Neither Motion contains even a reference thereto. Obviously appellees recognize that it is indefensible.

As pointed out by these appellants at pages 15-17 of their Statement as to Jurisdiction, the State Court, in an apparent attempt to avoid the impact of the Commerce Clause and the Natural Gas Act upon the sales here involved, construed the gas purchase contract between Phillips and Michigan-Wisconsin and the contract between Panoma and Natural as providing for the sale of the residue constituent of natural gas *in the ground,* before any of the operations of production, gathering or processing occur. This interpretation of the contract is obviously indefensible and is actually inconsistent with the interpretation which this Court itself gave to the same contract between Phillips and Michigan-Wisconsin in *Michigan-Wisconsin Pipe Line Company* v. *Calvert,* 347 U. S. 157 and *Phillips Petroleum Company* v. *Wisconsin,* 347 U. S. 672. The interpretation by the State Court is so far removed from reality that appellees do not even refer to it in their Motions.

The reason for the unrealistic interpretation of the contracts by the State Court was to provide an apparently plausible support for its holding that:

> "The sale is made before anything in the nature of interstate commerce occurs."

and thereby avoid the fundamental constitutional questions involved.

Appellees recognize, notwithstanding this peculiar interpretation of the contracts by the State Court, that the sale by Phillips to Michigan-Wisconsin occurs "at the exhaust of the processing plants" after the raw gas has been produced, gathered and processed.[1]

2. The Controlling Effect of the Opinion in Phillips v. Wisconsin.

This Court, in *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, made it very clear that Phillips is a natural gas company; that the sale by Phillips to Michigan-Wisconsin here involved is a sale in interstate commerce which, under this Court's holdings in *Public Utilities Commission* v. *Attleboro Steam & Electric Company*, 273 U. S. 83, is one not local in character and one which constitutionally is not subject to state regulation, even in the absence of Federal regulation. This Court, in *Phillips* v. *Wisconsin*, also made it clear that by the enactment of the Natural Gas Act, Congress has provided a Federal Agency to occupy the field of regulating such sales.

Appellees pay scant regard to this recent opinion of this Court, or the reasoning on which that opinion was based. They seek a judgment which would, to a large degree if not entirely, render the holding in that case nugatory. Appellees, the Commission and Certain Royalty Owners, argue primarily that while the Federal regulatory body may provide a ceiling price, the State authorities may provide a

---

[1] Appellees concede that in this respect there is no difference between the sale from Phillips to Michigan-Wisconsin and the sale from Panoma to Natural. Therefore, here, as in the Statement as to Jurisdiction, the legal questions involved will be discussed in relation to the Phillips-Michigan-Wisconsin factual situation with which the Court is familiar as a result of its consideration of the record in *Michigan-Wisconsin* v. *Calvert*, supra, and *Phillips Petroleum Company* v. *Wisconsin*, supra.

floor.[2] Phillips argues primarily that, notwithstanding the refusal of this Court to accept a similar argument in *Phillips* v. *Wisconsin*, the State may fix the price at which gas is sold in interstate commerce by refusing to permit the production of gas unless the residue so sold is sold at that price.

Thus appellees would impose limitations and restrictions on this Court's holdings in *Phillips* v. *Wisconsin*. The very statement of these contentions shows that the Federal questions involved are substantial and appropriate for review by this Court. Shall the Federal Power Commission in the exercise of its regulatory duties under the Natural Gas Act be met with the argument that it must apply prices dictated by the producing states? Can its price fixing jurisdiction be thwarted by state price fixing orders? This Court has held that by the Natural Gas Act Congress has occupied the field, *Public Utilities Commission* v. *United Fuel Gas Company*, 317 U. S. 456, 466-467 (1943); that the jurisdiction of the Federal Power Commission is not to vary from state to state depending on the degree of state regulation; and that the jurisdiction of the Federal Power Commission attaches to all wholesale sales of natural gas, whether by a pipeline company or not, and whether occurring before, during or after transmission by an interstate pipeline company, *Phillips* v. *Wisconsin*, supra. Appellees would amend those holdings by adding thereto the words "except as may be otherwise required by the producing states." That would destroy the purposes for which the Natural Gas Act was enacted.

---

[2] Appellees do not recognize the anomalous situation that will result under their theory where the floor fixed by the State is above the ceiling fixed by the Federal Power Commission.

3. There Is No Place Under the Commerce Clause for Dual Price Regulation.

The argument of appellees, The Corporation Commission and Certain Mineral Owners, that concurrent regulation of the price of natural gas sold in interstate commerce can exist, the State fixing the minimum price and Federal authorities fixing the maximum, is in conflict with the established rule that when Congress occupies a field, regulations made under its authority are exclusive, leaving nothing in that field for State regulation. *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 605, 613 (1926); *Bethlehem Steel Company* v. *N. Y. Labor Rel. Bd.*, 330 U. S. 767, 774 (1947); *Hood* v. *DuMond*, 336 U. S. 525, 541-543 (1949).

Phillips contends that by a clarifying amendment to its Opinion No. 275, *In the Matter of Michigan-Wisconsin Pipe Line Company*, the Federal Power Commission has recognized the Oklahoma price fixing order to be a proper part of Michigan-Wisconsin's cost of service. The amendment on its face does not admit of such a general interpretation. It is not clear that the amendment operates prospectively, and certainly it does not admit that the Federal Power Commission will in the future derogate its own powers to those of the producing states. As interpreted by Phillips the clarifying amendment cannot be reconciled with the opinion of the Court of Appeals in *Northern Natural Gas Company* v. *Federal Power Commission*, 206 F.2d 690; cert. den. 346 U. S. 922, or the opinion of this Court in *Phillips Petroleum Company* v. *State of Wisconsin*, 347 U. S. 672. This situation clearly demonstrates that in this action substantial Federal questions are presented which require the review of this Court.

Unless jurisdiction of these causes is taken and the issues decided on the merits, appellants may find themselves in a

position where they will be required under the five to four decision of the Supreme Court of Oklahoma to pay the minimum state price to the producer and yet not have such price recognized as a cost by the Federal Power Commission. In the case of Natural the excess of the minimum price over the contract price amounts to over $1,000,000 per annum.

4. The Order Is a Regulation of Sales, Not Production.

The primary argument of Phillips that the State's price fixing order is valid as a production order is in conflict with the holdings of this Court in *Phillips* v. *Wisconsin,* supra. Phillips concedes that the sale is made at the outlet of a gasoline plant after all activities of producing, gathering and processing have been completed. In *Phillips* v. *Wisconsin,* Phillips did not argue that such sales were a part of production; the argument there was that the sales were a part of gathering. This contention was rejected. This Court stated that the finding of the Federal Power Commission to that effect was without basis in law; that production and gathering ended before the sales were made. Obviously if they are not a part of gathering such sales are not a part of production, the initial activity.

Phillips now argues that the order does not directly fix the price of residue gas at the outlet of a gasoline plant, but merely imposes a condition on production, namely, that gas shall not be produced unless the residue is sold at the price fixed. Thus, it is conceded that at least the order constitutes an embargo against production to enforce the price fixed by the State.

Even interpreting the order as a production order, the sanction against production is invalid. When the gas is

produced, gathered and processed, the residue constituent is a lawful article of commerce. Its sale in interstate commerce cannot be prohibited, regulated or encumbered by the states.[3] *The fact that the production is conditioned upon compliance with an attempted effort to fix the price of gas sold in interstate commerce makes it void under the Commerce Clause. Foster-Fountain Packing Company* v. *Haydel,* 278 U. S. 1 (1928); *Toomer* v. *Witsell,* 334 U. S. 385 (1947).

In support of its theory, Phillips argues, in effect, that it is necessary that the State have power to require that the producers who sell their residue gas at the outlets of gasoline plants obtain the price fixed by the order, so that all producers will have the same economic profit from their operations when related to the wellhead—that there must be "uniformity." But this Court many times has stated that *no* state interest justifies state regulation of interstate commerce.

Moreover, the theory has been expressly rejected by the Court of Appeals for the Eighth Circuit in *Northern Natural Gas Company* v. *Federal Power Commission,* 266 F.2d 690.[4] In that case the Court recognized that state regulation of price in the producing areas was equivalent to fixing the price to the ultimate consumers in the consuming states, which was beyond the power of the state. In the instant cases Panoma and Phillips are natural gas companies, just as is Northern Natural. For the same reasons stated in the Northern Natural case, the state may not fix the prices charged by Panoma and Phillips.

---

[3] *West* v. *Kansas Natural Gas Company,* 221 U. S. 229 (1911); *Pennsylvania* v. *West Virginia,* 262 U. S. 553 (1923); *Hood* v. *DuMond,* 336 U. S. 525, 535 (1949).

[4] Certiorari denied by this Court and Motion for Rehearing denied on the day the opinion in *Phillips* v. *Wisconsin* was delivered.

5. The Constitutional Questions Were Presented to and Considered by the State Court.

Phillips argues that appellants did not make the contention before the State Court that the State Commission's order is incompatible with the jurisdiction of the Federal Power Commission under the Natural Gas Act. This contention is difficult to understand, in view of the fact that this question was expressly presented to the State Court in oral argument and in briefs filed by appellants in the State Court, and four members of the Court cited the conflict in their dissenting opinion. Moreover, counsel for Phillips orally and in briefs discussed the issue. In one of its briefs filed in the State Court, Phillips, referring to appellants' argument as to the importance of the Court of Appeals' opinion in *Wisconsin* v. *Federal Power Commission,* 205 F. 2d 706, said:

> "The decision in *Wisconsin* v. *Federal Power Commission* has no bearing on these cases.
>
> "The basis of plaintiffs in error's argument is that the Circuit Court in the *Wisconsin* case held that the Federal Power Commission has jurisdiction under the Natural Gas Act, 15 U.S.C. secs. 717 et seq., to regulate sales by Phillips of residue from the gas here involved and that the order of the Corporation Commission is an attempt to regulate the same sales and for that reason invalid."

Throughout the entire proceedings appellants have continuously stressed the invalidity of the Commission's price fixing order when tested by the Commerce Clause. Until the decision of the Court of Appeals of the District of Columbia, it was uncertain whether, although the sales were recognized to be a part of interstate commerce, jurisdiction

thereof was withheld from the Federal Power Commission by the exclusion of production and gathering. It was appellants' contention that the order is violative of the Commerce Clause, regardless of whether jurisdiction over such sales was withheld from the Power Commission. Beyond question the matter was presented to and argued before the State Court, and considered by that Court.

Appellants respectfully submit that the Motions to Dismiss should be denied and the cases heard on briefs and oral argument.

Respectfully submitted,

JACK T. CONN
D. H. CULTON
COLEMAN HAYES
ARTHUR R. SEDER, JR.

Counsel for MICHIGAN-WISCONSIN PIPE LINE COMPANY

CLARENCE H. ROSS
CHARLES C. McDUGALD
WARREN T. SPIES
D. H. CULTON
COLEMAN HAYES

Counsel for NATURAL GAS PIPE LINE COMPANY OF AMERICA

Office - Supreme Court, U. S.
FILED
SEP 1 1954
HAROLD B. WILLEY, Clerk

In The
Supreme Court of the United States

OCTOBER TERM, 1954

No. 320

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,
Appellees.

No. 322

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,
VERSUS
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,
Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA

T. MURRAY ROBINSON,
LEON SHIPP,
FLOYD GREEN,
MAC Q. WILLIAMSON,
Oklahoma City, Oklahoma.

AUGUST, 1954.

KING LAW BRIEF CO., 222 N.W. THIRD, OKLAHOMA CITY — PHONE FO 5-2969

INDEX

PAGE

Statement of Appellees opposing jurisdiction and motion to dismiss or affrim in accordance with the provisions of Rule 12. Paragraph 3 of the Supreme Court of the United States as Amended 2

I. 2

II. 3

Authority:

Cities Service Gas Company v. Peerless Oil & Gas Company et al., 340 U. S. 179 6

Minneapolis, St. Paul & S. S. M. Ry. Co. v. C. L. Merrick Co., 254 U. S. 376 8

Phillips Petroleum Company v. State of Oklahoma, 340 U. S. 190 8

III. 12

Authority:

Michigan-Wisconsin Pipe Line Co. v. Calvert, 74 S. Ct. Rep. 396 12

Phillips Petroleum Company v. State of Wisconsin, 74 S. Ct. Rep. 795 12

IV. 14

Authority:

Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U. S. 498 15

Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 591 17

Interstate Natural Gas Co. v. Federal Power Commission, 331 U. S. 682 16-17

PAGE

Bailey v. Alabama, 219 U. S. 219, 244 21

Cities Service Gas Company v. Peerless Oil & Gas Company, 340 U. S. 179 19

Foster Fountain Packing Co. v. Haydel, 278 U. S. 1 21

Parker v. Brown, 317 U. S. 341 19

South Carolina State Highway Dept. v. Barnwell, 303 U. S. 177, 185 22

V. 23

2 Cooley's Constitutional Limitations (8th ed.), Pages 1319-1320 23

Bratton v. Chicago, 260 U. S. 110 24

Brazee v. Michigan, 241 U. S. 340 24

Chicago Board of Trade v. Olsen, 262 U. S. 1 25

Crane v. Johnson, 242 U. S. 339 24

Dent v. West Virginia, 129 U. S. 114 24

Douglas v. Noble, 201 U. S. 165 24

Graves v. Minnesota, 272 U. S. 425 24

German Alliance Insurance Co. v. Lewis, 233 U. S. 339 25

Gundling v. Chicago, 177 U. S. 183 25

Ha··man v. Galveston, 273 U. S. 414 24

LaTourette v. McMaster, 248 U. S. 465 25

Lehon v. Atlanta, 242 U. S. 53 25

Merchants Exchange v. Missouri, 248 U. S. 365 24

Nebbia v. New York, 291 U. S. at 528 24

Roschen v. Ward, 279 U. S. 337 25

Veix v. Sixth Ward Building & Loan Association of Newark, N. J., 310 U. S. 32 23

Watson v. Maryland, 218 U. S. 173 24

PAGE

Hodge Co. v. Cincinnati, 284 U. S. 335 25

Pierce Oil Corporation v. Phoenix Refining Co., 259 U. S. 125, 42 S. Ct. 440 25

VI. 27

VII. 30

Conclusion 31

In The
Supreme Court of the United States

OCTOBER TERM, 1954

No.

MICHIGAN-WISCONSIN PIPE LINE COMPANY,

Appellant,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,

Appellees.

No.

NATURAL GAS PIPELINE COMPANY OF AMERICA,

Appellant,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,

Appellees.

No.

PANHANDLE EASTERN PIPE LINE COMPANY,

Appellant,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.,

Appellees.

APPEALS FROM THE SUPREME COURT OF OKLAHOMA

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM IN ACCORDANCE WITH THE PROVISIONS OF RULE 12, PARAGRAPH 3 OF THE SUPREME COURT OF THE UNITED STATES AS AMENDED

Come now the Appellees and file their statement in opposition to Appellants' statement as to jurisdiction and hereby move the Court to dismiss the appeal herein or to affirm the decision and judgment of the Supreme Court of the State of Oklahoma from which decision and judgment said appeal is taken.

I.

The questions presented by the three appeals are identical. They are appeals from a decision of the Supreme Court of Oklahoma affirming an order of the Corporation Commission fixing a minimum price for natural gas produced in the Guymon-Hugoton field of Oklahoma at the wellhead or on the lease from which it is produced, and prescribing a price equivalent thereto if sold off the lease or otherwise utilized, and further pro-

viding that if the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be equivalent to the wellhead price plus the reasonable cost of gathering, and if the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering the price for the residue gas must be sold to realize the prescribed wellhead price.

II.

The order of the Corporation Commission attached to appellants' statement as Appendix B discloses that the Commission specifically found that by a previous order it had fixed the minimum price of gas produced from the Guymon-Hugoton field at 7c per thousand cubic feet; that the order had been affirmed by both the Supreme Court of Oklahoma and the Supreme Court of the United States. The Commission further found that since the issuance of its previous order the general increase in commodity price and the use and value of gas had increased to the point that the production and sale of gas from the Guymon-Hugoton field at a price less than 9.8262c per thousand cubic feet would cause:

(a) Economic waste of a great natural resource, to-wit, natural gas;

(b) Physical waste of natural gas;

(c) Loss to royalty owners in said field;

(d) Loss to the State of Oklahoma of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination between producers in the field.

The Commission further found that only a small portion of gas produced in the field is actually sold or delivered at the wellhead and that in those instances where such sale and delivery does not occur at the wellhead it was necessary for the producer to determine whether or not it was realizing the equivalent of the minimum price fixed by the order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons, and the residue then sold during or at the conclusion of gathering; that such processing during or at the conclusion of gathering constitutes the performance of a valuable service to the purchaser in that said processing conditions said gas for pipeline transmission and the residue from numerous wells is delivered at a central point eliminating the necessity for the purchaser to make substantial investments and incur substantial expenses in gathering the gas; that the liquid hydrocarbons extracted by said process are of value to the producer but fluctuate from time to time depending upon competitive conditions beyond his control; that on the average the value realized by the producer from the sale and use of

liquid hydrocarbons thus extracted does not exceed the cost of gathering and processing the gas, and that the producer to realize a price for such gas equivalent to and not less than 9.8262c per thousand cubic feet at the wellhead must receive for such processed gas a price of not less than 9.8262c per thousand cubic feet.

The Commission further found that a minimum price order can not be made fully effective and discrimination prevented without a means provided for determinnig the amount realized for gas by producers operating gathering and processing plants.

Pursuant thereto the Commission promulgated and issued the following order:

> "IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:
>
> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262c per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262c per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262c per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262c per thousand cubic feet.

"2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic feet.

"3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

"4. This order shall become and be effective the 1st day of August, 1952.

"DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29th day of July, 1952."

The order of the Corporation Commission is in exact accordance with its previous order affirmed by this Court in *Cities Service Gas Company* v. *Peerless Oil & Gas Company et al.*, 340 U. S. 179, except that it changes the minimum price from 7c to 9.8262c and provides a yardstick for the establishment of a wellhead price in those instances where gas is sold away from the wellhead upon the conclusion of either gathering or gathering and processing.

In that case, Mr. Justice Clark, speaking for the Court, said:

"* * * The Oklahoma Supreme Court construed the 1915 Act to permit the general order setting a minimum price in the field. It further rules that economic waste was within the contemplation of the statute. Finally, with regard to state questions, it held that the orders did not violate the Oklahoma Constitution.

"The Oklahoma court also concluded that the statutes so construed and the orders made thereunder do not violate the Federal Constitution on the grounds relied on by Cities Service. We agree.

"The Due Process and Equal Protection issues raised by appellant are virtually without substance. It is now undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas. * * *

"* * * It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. (Citing cases.) The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. * * *

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation. * * *

" * * * Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. * * *

"We hold that on this record the Oklahoma Corporation Commission issued valid orders, and that the decision of the court below should be affirmed."

If a question has been conclusively settled by the United States Supreme Court, it is no longer open for review.

Minneapolis, St. Paul & S. S. M. Ry. Co. v. *C. L. Merrick Co.*, 254 U. S. 376.

The necessity for the yardstick was recognized by this Court in *Phillips Petroleum Company* v. *State of Oklahoma*, 340 U. S. 190, a companion case to *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, *supra*.

As reflected by the opinion of the Supreme Court of Oklahoma in that case, 220 P. 2d 279, subsequent to the effective date of the 7c minimum price order, Phillips Petroleum Company filed an application with the Corporation Commission to vacate or modify the price-fixing order in which it was shown that Phillips Petroleum Company owned oil and gas leases on several thousand acres of land in the Guymon-Hugoton field and had

several producing gas wells thereon and was then taking several million cubic feet of gas daily from such wells; that Phillips Petroleum Company sold no gas produced from the field in the State of Oklahoma but gathers the gas from its wells through its own gathering system to a central point in the State of Texas where it processes the gas and extracts therefrom natural gasoline and other hydrocarbons and sells the residue gas. Phillips Petroleum Company asked that the order be vacated as applied to it or that it be modified by a finding to the effect that its receipts for the sale of residue gas together with its receipts for the value of hydrocarbons extracted therefrom less its cost of gathering and processing equalled the wellhead price.

This Court in its opinion in *Phillips Petroleum Company* v. *State of Oklahoma, supra,* after reciting that Phillips was a producer in the field, with its own gathering system through which gas is transported to a central point and there processed for the extraction of gasoline and other hydrocarbons, then either utilizing or selling the same and then selling the residue to pipeline companies, noted that Phillips, after the entry of the order setting a minimum price on all natural gas taken from the field, moved that the Commission either vacate the order in so far as it was applicable to Phillips, or clarify the application of the order to gas not actually sold at the wellhead, and said:

"The Commission concluded that Phillips had no standing to complain of the general order since the company was currently complying with it by realizing on the average, from sale and utilization of by-products the sale of gas, the minimum price set."

and,

"Phillips argues that it is not a purchaser but merely a producer; that unlike the situation in Cities Service, the order as applied to it lacks any connection with correlative rights, the interest of the public, monopolistic practices or discrimination. The distinction is without a difference; the connection between realized price and conservation applies to all production in the field, whether owners purchase from others or not, and whether they own pipelines or not. In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any.

"Phillips also relies heavily on the contention that the orders are unreasonably vague. In substance, this argument is nothing more than that the determination by an integrated company of proceeds realized from gas at the wellhead involves complicated problems in cost accounting. These problems are common to a host of valid regulations. There is nothing to indicate that Phillips will be penalized for reasonable and good faith efforts to solve them."

It therefore becomes clearly apparent that the Commission's yardstick for the purpose of establishing the equivalent of a wellhead price in those cases where gas was sold away from the wellhead after gathering or after gathering and processing is in accordance with this Court's veiws as expressed in that opinion.

The evidence upon which the yardstick portion of the order is based presents no Federal question.

The necessity and propriety of the Commission's yardstick for determining the equivalent of the wellhead price is adequately shown by the opinion of the Oklahoma Supreme Court attached as Appendix "A" to appellants' statement. It is therein shown that Phillips Petroleum Company introduced evidence before the Commission reasonably tending to show that it is primarily a producer in the Guymon-Hugoton field. That it sells no gas at the wellhead but transports the gas to a central point, removes liquid hydrocarbons and delivers the dry or residue gas to its contract purchasers. That the value of the liquid hydrocarbons, although fluctuating, equals the cost of gathering and processing and that in order to obtain the equivalent of 9.8262c per thousand cubic feet at the wellhead Phillips must receive 9.8262c for the residue gas after processing.

Thus the units of measurement to be employed in the yardstick or formula established by the Commission is a factual determination and presents no Federal question.

The precise question presented by this appeal was determined by this Court adversely to the contention of appellants in *Phillips Petroleum Company* v. *State*, *supra*, upon the appeal by the producer, that is, Phillips Petroleum Company. Appellants now desire a ruling

upon the same question in an appeal brought by the purchaser. The contracts involved are the same in each instance. The gas sold is the same in each instance. The rules of law involved should and must be the same in each instance.

The appeals do not present a substantial Federal question.

III.

Appellant contends the previous authorities were superseded by this Court's decisions in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 74 S. Ct. Rep. 396 and *Phillips Petroleum Company* v. *State of Wisconsin*, 74 S. Ct. Rep. 794. Not so. In *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, the Court was concerned with a state tax applied to an interstate natural gas pipe line company engaged in interstate commerce. In *Phillips Petroleum Company* v. *State of Wisconsin*, the Court was concerned with whether or not Phillips Petroleum Company is a natural gas company within the jurisdiction of the Federal Power Commission. In that opinion Mr. Justice Minton, speaking for the Court said:

> "There can be no dispute that the overriding congressional purpose was to plug the 'gap' in regulation of natural-gas companies resulting from judicial decisions prohibiting on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that 'the regulation of wholesale rates of gas and electrical energy moving in interstate commerce

is beyond the constitutional powers of the States.' *Interstate Natural Gas Co. v. Federal Power Commission, supra*, 331 U. S. at page 689, 67 S. Ct. at page 1487. The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them. Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission system.

"Petitioners cite our recent decisions in *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U. S. 179, 71 S. Ct. 215, 95 L. ed. 190, and *Phillips Petroleum Co. v. State of Oklahoma*, 340 U. S. 190, 71 S. Ct. 221, 95 L. ed. 204, as authority for the proposition that the states may regulate the sales in question here and, hence, that such sales are not within the gap which the Natural Gas Act was intended to fill. Those cases upheld as constitutional state minimum price orders, justified as conservation measures, applying to sales of natural gas in interstate commerce. But it is well settled that the gap referred to is that thought to exist at the time the Natural Gas Act was passed, and the jurisdiction of the Commission is not affected by subsequent decisions of this Court which have somewhat loosened the constitutional restrictions on state activities affecting interstate commerce, in the absence of conflicting federal regulation."

The emphasis on the word "minimum" is the Court's. The Federal Power Commission has in no wise attempted to regulate the production and gathering of natural gas. As seen by the decisions of this Court, *supra*, such is beyond the jurisdiction of the Federal Power Commission.

This Court's decisions support two valid types of regulations, each covering a separate field. First, state

regulation covering the production and gathering of natural gas. This may be done to effect conservation and to eliminate waste; fixing minimum prices is within this power left to the states.

Second, regulation of the transportation and purchase for resale of natural gas, including its sale price to consumers throughout the United States is within the province and jurisdiction of the Federal Power Commission. To say that the Federal Power Commission has jurisdiction to regulate is not to say that, in the absence of an exercise of such jurisdiction that all other jurisdiction is destroyed. Two such regulations may coexist if there is no conflict, if one does not impede or impair the other. Certainly a minimum price is a waste prevention measure. A maximum price is a consumer protection measure. If there is air space between the floor and the ceiling, neither pushes the other.

IV.

The order of the Commission does not violate the commerce clause of the Federal Constitution. The Commerce Clause does not prevent or restrict the state from regulating the production of gas to prevent waste and conserve the natural resources.

The Natural Gas Act was created for the purpose of filling a void in the regulations needed for public protection. Interstate pipe line companies were successful in

obtaining court decisions holding that certain of their activities, by reason of the Commerce Clause, were beyond state regulation, and since no federal regulation existed, they were free to act as thy chose. Mr. Justice Reed in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, makes these statements:

> "Without entering upon another review of its legislative history, suffice it to say that the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limit of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies."

And in the same opinion:

> "Before the Colorado Interstate decision, it was apparent that the value of producing facilities and the cost of gas bought by a natural-gas company from producers would be weighty factors in rate making whether a rate-base method or other method for fixing rates was used. Low valuation by the Commission of producing properties or low-cost allowance for purchased gas discourages exploration for gas or its sale in interstate commerce. Congress knew this necessary relationship between production and distribution but excluded the Commission from exercising any direct control or regulation over the actual production and gathering of natural gas."

And in answer to the argument that since natural gas is the life blood of a pipeline system, a company by disposing of its gas reserves, unhampered by Commission con-

trol, may render itself unable to continue service, and consequently abandon its facilities and services without the consent of the Commission, this Court in the same opinion said:

> "The argument begs the question. The section, like those above, covers only 'facilities subject to the jurisdiction of the Commission.'
>
> "To accept these arguments springing from power to allow interstate service, fix rates, and control abandonment would establish wise control by the Federal Power Commission over the production and gathering of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress.
>
> "The Legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views."

In *Interstate Natural Gas Co. v. Federal Power*

Commsision, 331 U. S. 682, Mr. Chief Justice Vinson said:

> "Thus the House Committee Report states: 'The bill takes no authority from State Commissions, and is so drawn as to complement and in no manner usurp State regulatory authority. * * *' Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach."

In *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, Mr. Justice Douglas, speaking for the Court, said:

> "We do not mean to suggest that Congress was unmindful of the interests of the producing states in their natural gas supplies when it drafted the Natural Gas Act. As we have said, the Act does not intrude on the domain traditionally reserved for control by state commissions; and the Federal Power Commission was given no authority over 'the production or gathering of natural gas.' Sec. 1(b). In addition, Congress recognized the legitimate interests of the States in the conservation of natural gas. By Sec. 11 Congress instructed the Commission to make reports on compacts between two or more States dealing with the conservation, production and transportation of natural gas. The Commission

was also directed to recommend further legislation appropriate or necessary to carry out any proposed compact and 'to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.' Sec. 11(a). Thus Congress was quite aware of the interests of the producing states in their natural gas supplies. But it left the protection of those interests to measures other than the maintenance of high rates to private companies."

Contrary to appellants' contention the Court of Appeals in *Wisconsin* v. *Federal Power Commission*, 205 F. 2d 710, did not categorically hold that a state may not regulate the price of natural gas. That opinion did hold that the Natural Gas Act was designed to close the gap of regulation that could not be reached by the states. Continuing the quote from the opinion as set forth on page 11 of the statement by Michigan-Wisconsin and Natural Gas Pipe Line Company, appellants, the Court said:

"It was plain long before the Natural Gas Act was passed that 'state regulatory power could not reach high-pressure trunk lines and sales for resale. This was the "gap" which Congress intended to close.' *Federal Power Commission* v. *East Ohio Gas Co.*, 1950, 338 U. S. 464, 472-473, 70 S. Ct. 266, 271, 94 L. ed. 268. As we have shown, the Supreme Court has determined that Congress closed it."

In the footnote to that opinion at page 710 it is said:

"Since Phillips' sales are made after the gas has been gathered into trunk lines *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 1950, 340 U. S. 179, 71

S. Ct. 215, 95 L. ed. 190, is irrelevant. That case upholds a state's power, in aid of conservation, to fix minimum prices for natural gas sold at the wellhead for interstate movement. Such sales are obviously made during the 'production and gathering' which Congress reserved to state control, and it 'is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce.' 340 U. S. at page 186, 71 S. Ct. at page 219. Moreover the Supreme Court has said: 'prior constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act.' *Federal Power Commission* v. *East Ohio Gas Co.*, 1950, 338 U. S. 464, 472, 70 S. Ct. 266, 270, 94 L. ed. 268."

And,

"Again on April 7, 1953, the Court said: 'Especially in the litigation arising under the Gas Act has this Court expressed the view that the limitations established on Commission jurisdiction therein were designed to coordinate precisely with those constitutionally imposed on the states.' *United States* v. *Public Utilities Commission of California*, 345 U. S. 295, 311, 73 S. Ct. 706, 716."

Appellants criticize this Court's reliance on *Parker* v. *Brown*, 317 U. S. 341 in the decision of *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U. S. 179, and categorically state that the state regulation was upheld as not violating the Commerce Clause on the grounds that the state regulation occurred before the raisins were processed and packed preparatory to interstate sale and shipment. The statement does not fit the facts

set forth in *Parker* v. *Brown*. A portion of the raisins were sold for itnerstate commerce prior to the time they were processed and packed for sale. The rationale of that decision is to the effect that the court is not bound by a purely mechanical test as to when local activities are distinguished from interstate activities under the Commerce Clause. In the body of the opinion it is said:

> "* * * But courts are not confined to so mechanical a test. When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. * * *.
>
> "Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct,' see *Di Santo* v. *Pennsylvania, supra;* cf. *Wickard* v. *Filburn, supra,* not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. * * * There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it."

This Court in that opinion further pointed out that the

production and marketing of raisins in the State of California presented a problem local in character and urgently demanding state action for the economic protection of those engaged in one of its important industries. The Court also pointed out the grave economic conditions confronting the raisin growers during a certain period when the state had no regulation. This closely parallels the experiences of the State of Oklahoma in oil and gas production prior to effective regulation by the Corporation Commission of the State.

Appellants proceed upon the theory that the orders of the Corporation Commission were designed to regulate the price of gas paid by interstate carriers. Such a theory is a misconception of the record. The order clearly reflects that it is applicable only to the producers of gas. The penalties for its violation may be directed only to producers.

Foster Fountain Packing Co. v. *Haydel*, 278 U. S. 1, cited by appellants, is the Louisiana shrimp case. In that proceeding Louisiana by legislation attempted to prohibit the transportation of shrimp, from which the heads and gills had not been removed, from the state. No such prohibition against interstate transportation appears in either the Oklahoma statute or the order of the Corporation Commission enacted pursuant thereto.

Bailey v. *Alabama*, 219 U. S. 219, 244, cited by

appellants, must be a misprint. That case involves the validity of a statute concerning involuntary servitude.

South Carolina State Highway Dept. v. *Barnwell*, 303 U. S. 177, 185, cited as a footnote on page 14 of the Michigan-Wisconsin, Natural Gas Pipeline Company statement as to jurisdiction, was concerned with a statute which prohibited the use of state highways by motor trucks wider than 90 inches or exceeding weight loads of 20,000 pounds. The Commerce Clause was invoked, yet this Court sustained the validity of the act.

The Commerce Clause of the Constitution does not prevent or prohibit state regulations of its gas fields in so far as the regulations cover the productoin of gas therefrom and regulate the activities of producers within the state borders.

The State of Oklahoma cannot, under the guise of waste prevention, regulate the price of gas in Wisconsin. It follows that Oklahoma cannot, in the exercise of such power, fix the price of gas in Oklahoma so as to prevent its being sold for an excessive price in Wisconsin. The Federal Government, acting through the Federal Power Commission may. That is the gap which was closed by the Natural Gas Act. The closing of that gap did not operate to deprive the states right to validly regulate, and such a valid state regulation is not repugnant to the Commerce Clause of the Federal Constitution. It was not before the Natural Gas Act was passed. It is not now.

V.

There is nothing in the Commission's order that contravenes either the Due Process Clause or the Contract Clauses of the Constitution.

It should not require the citation of authority to disclose that all contracts of whatever nature are subject to a valid exercise of the police power. This applies to all state laws for the protection of the public and the conservation of the natural resources of the state. The authority is not limited to health, morals and safety.

In *Veix* v. *Sixth Ward Building & Loan Association of Newark, N. J.*, 310 U. S. 32, this Court said:

> "In *Home Building & Loan Association* v. *Blaisdell*, this Court considered the authority retained by the state over contracts 'to safeguard the vital interests of its people.' The rule that all contracts are made subject to this paramount authority was there reiterated. Such authority is not limited to health, morals and safety. It extends to economic needs as well."
>
> (Pages 39 and 40).

In 2 Cooley's Constitutional Limitations (8th ed.), Pages 1319-1320, it is said:

> " 'The Legislature may also regulate and restrict the use and enjoyment of landowners of the natural resources of the State, such as subterranean waters, gas, oil and timber, so as to protect them from waste and prevent the infringement of the rights of others. Such legislation does not infringe the constitutional inhibition against the taking of property without due process of law, denial of the equal protection of the laws, or taking property without just compensation'."

The statutes of the State of Oklahoma authorizing the Commission to fix the price of natural gas has been the law of Oklahoma since 1913. These statutes were in existence when the appellants herein built their pipelines and commenced business within the State of Oklahoma. The statutes were in existence at the time of the execution of the gas purchase contracts by each of the appellants with producers of natural gas in the Oklahoma portion of the Guymon-Hugoton field. The contracts so made were not only subject to the general police power of the State of Oklahoma; they were subject to the express authority of the Corporation Commission to fix the price of natural gas.

This Court has decided upon numerous occasions that the right to conduct a business or to pursue a calling may be conditioned.

Bratton v. *Chicago*, 260 U. S. 110;

Nebbia v. *New York*, 291 U. S. at 528;

Dent v. *West Virginia*, 129 U. S. 114;

Watson v. *Maryland*, 218 U. S. 173;

Crane v. *Johnson*, 242 U. S. 339;

Hayman v. *Galveston*, 273 U. S. 414;

Douglas v. *Noble*, 201 U. S. 165;

Graves v. *Minnesota*, 272 U. S. 425;

Brazee v. *Michigan*, 241 U. S. 340;

Merchants' Exchange v. *Missouri*, 248 U. S. 365;

LaTourette v. *McMaster*, 248 U. S. 465;

German Alliance Insurance Co. v. *Lewis*, 233 U. S. 339;

Gundling v. *Chicago*, 177 U. S. 183;

Roschen v. *Ward*, 279 U. S. 337;

Lehon v. *Atlanta*, 242 U. S. 53;

Chicago Board of Trade v. *Olsen*, 262 U. S. 1;

Hodge Co. v. *Cincinnati*, 284 U. S. 335.

In *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125, 42 S. Ct. 440, this Court said:

> "When the largest discretion which the state had to impose terms upon this foreign corporation as a condition of permitting it to engage in wholly intrastate business is considered (*National Council U. A. M.* v. *State Council*, 203 U. S. 151, 163, 27 S. Ct. 46, 51 L. ed. 132; *Pullman Co.* v. *Kansas*, 216 U. S. 56, 66, 30 S. Ct. 232, 54 L. ed. 378; *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68, 83, 34 S. Ct. 15, 58 L. ed. 127) the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. 'By accepting the privilege it voluntarily consented to be bound by the conditions' attached to it (216 U. S. 56, 66, 30 S. Ct. 232, 54 L. ed. 378), and, while enjoying the benefits of that privilege, it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the state, is unconstitutional."

We reiterate that the order complained of applies only to producers of natural gas operating within the

borders of the State of Oklahoma. It is designed to prevent the production and sale of natural gas at a price that would constitute economic waste of one of the state's most valuable natural resources. It prevents physical waste by promoting conservation and orderly development of the fringe areas of the gas field involved. A purchasing pipeline company cannot violate the order. No penalty whatsoever could be assessed against the purchaser. The Commission can enforce its orders only by contempt proceedings against the producer or by requiring him to cease production of gas until the order has been complied with.

Evidence of company operatoins and company investments in other states was obviously not pertinent for the purpose of determining the minimum price of gas produced from the field involved. The physical facts reflected that Phillips Petroleum Company sold no gas at the wellhead. The applicants before the Corporation Commission sought an order fixing the wellhead price of gas. The previous order of the Commission had fixed the price of gas with no method of determining the equivalent thereof where gas was sold at points other than the wellhead. Experience had shown that it was therefore necessary to take additional evidence to determine whether or not Phillips, as a producer of gas, had complied with the terms of the order. As pointed out by this Court in *Phillips Petroleum Company* v. *State*, *supra*, it was

necessary to determine from Phillips expense and operation the sums required to gather and process the gas and the sums received for the hydrocarbons extracted therefrom in order to properly determine whether or not Phillips had complied with the price-fixing order. Since this was done outside of the State of Oklahoma it was necessary to hear evidence of these costs, expenses and returns incurred and performed outside of the State of Oklahoma. Such matters often occur in public utility rate cases where a company is subject to the regulatory provisions of one state yet has investments and performs a portion of its operations in other states. The order complained of, by including a formula based upon the only evidence presented at the hearing, eliminates any such future controversies. It provides a manner of determining the equivalent of a minimum wellhead price where gas is sold at points other than the wellhead.

VI.

The appellants contend that the order is based upon the desires of royalty owners and producers for an increased price. They say:

> "The increase of minimum price from 7c to 9.8262c per m.c.f. is supported by nothing in the record other than pleas of royalty owners and producers to increase their receipts."

This statement is false and unfair to this Court.

We do not have the printed record before us. The

notice of appellants, however, designate for transmission to the Clerk of this Court a complete transcript of all the testimony and exhibits before the Corporation Commission of the State of Oklahoma. That record will show that the following evidence was introduced:

That the value of all fuel costs is related to its B.T.U. energy content.

That if the average cost of natural gas was 10c per thousand cubic feet, that energy acquired by its purchase would cost less than the energy obtained through any other competitive fuel.

That the energy in the form of crude oil at $2.55 per barrel would be the equivalent of paying $.43 per thousand cubic feet for natural gas.

That the energy cost of kerosene at 9.25c per gallon would be the equivalent to natural gas at a cost of $.69 per thousand cubic feet.

That any increase in the price of gas would tend to prevent waste and to conserve gas.

That the higher the price of gas the greater the amount of acreage which will be developed and the mineral owners along the edge of the field who otherwise would obtain nothing would acquire an income therefrom.

That the reservoir would thus yield additional quantities of gas to that which would be recovered if its price were cheaper.

That if edge wells are not drilled, part, but only part of the gas under such tracts will migrate to tracts owned by others on which wells have been drilled.

That since the date of the previous order of the Commission the price of crude oil had almost doubled.

That since the previous order of the Commission the price of coal had increased as to B.T.U. energy value from 13c to 18.4c.

That certain purchasers in Kansas were paying royalty owners 11c per thousand cubic feet at the wellhead from wells located in the same field as that involved in the case at bar .

That various companies purchasing gas from the Oklahoma portion of the field were paying prices varying from 7.27c to 9.95781c.

That there is discrimination as between mineral owners in the field.

That companies owning undivided interests in the same leases and producing gas from the same well were paying different prices to the mineral owners for the gas.

That since the Commission's previous order the cost of production had materially increased.

That since the Commission's previous order new gas purchasing contracts had been entered into between producers and purchasers for prices ranging up to 11c per thousand cubic feet at the wellhead.

That a price of 9.8262c at the wellhead is in excess of the price that could be obtained if the gas in the field were not otherwise committed.

That natural gas is an exhaustible natural resource.

That the interest of the State of Oklahoma and its citizens requires a price of gas which will produce the maximum revenue consistent with the policy of maintaining markets.

That a price of 9.8262c would not adversely affect this position in respect to markets.

That increased prices for gas has a general tendency to prevent waste and promote development.

The appellants herein offered no oral testimony.

Phillips Petroleum Company offered the following evidence:

That out of some 1,000 wells in the Guymon-Hugoton field gas is sold at the wellhead from only 141 wells.

That Phillips both produces and purchases gas at the wellhead in the field.

That none of the gas that Phillips produces is sold at the wellhead with the exception of one well.

That gas purchased by Phillips is dedicated to it by contract for the life of the field.

That gas produced and purchased by Phillips and gathered by Phillips is transported to its Sherman plant in Texas and processed under the terms of a contract with Michigan-Wisconsin.

That gas produced, gathered and transported by Phillips to its Hansford plant in Texas is sold under a contract therefor to Panhandle-Eastern.

That Phillips did not advocate an increase in the wellhead price of gas but that if it was to realize the equivalent of 9.8262c per thousand cubic feet at the wellhead, it would have to receive 9.8262c per thousand cubic feet for the sale of gas after it was gathered and processed.

Appellants offered no evidence upon this phase of the controversy.

VII.

Appellees contend that the record in this case discloses no substantial Federal question and that therefore this Court is without jurisdiction of this cause.

Appellees further contend that all of the pertinent questions presented by this appeal have been previously decided by this Court adversely to the contention of appellants.

It is therefore submitted that appellees' motion herein to dismiss the appeal or affirm the judgment of the Supreme Court of Oklahoma should be granted.

CONCLUSION

WHEREFORE, appellees pray that this Court refuse to note jurisdiction in this cause and that the appellees' motion to dismiss the appeal or affirm the judgment be granted.

Respectfully submitted,

T. MURRAY ROBINSON,
LEON SHIPP,
930 Hightower Building,
Oklahoma City, Oklahoma,
Attorneys for certain mineral owners in Texas County, Oklahoma;

FLOYD GREEN,
Capitol Office Building,
Oklahoma City, Oklahoma,
Conservation Attorney;

MAC Q. WILLIAMSON,
Capitol Office Building,
Oklahoma City, Oklahoma,
Attorneys for Corporation Commission of the State of Oklahoma,
Appellees.

AUGUST, 1954.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
SEP 16 1954
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

October Term, 1954.

No. 320 FILED NOV 8 1954

MICHIGN-WISCONSIN PIPE LINE COMPANY,
Appellant,
vs.
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL.*, *Appellees.*

No. 321 FILED NOV 8 1954

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,
vs.
THE CORPORATION COMMISSION OF THE STATE OF OLKAHOMA, *ET AL.*, *Appellees.*

No. 322 FILED SEP 16 1954

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,
vs.
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL.*, *Appellees.*

Appeals from the Supreme Court of the State of Oklahoma.

MOTION OF APPELLEE PHILLIPS PETROLEUM COMPANY TO DISMISS.

RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
KENNETH HEADY,
Phillips Building,
Bartlesville, Oklahoma,

CECIL C. HAMILTON,
1211 First National Building,
Oklahoma City, Oklahoma,

Attorneys for Appellee,
Phillips Petroleum Company.

INDEX.

PAGE

Motion to Dismiss 1

Statement of case 2

The Federal Questions Presented Are Not Substantial. 11

I. The order does not violate the Commerce clause of the Federal Constitution 11

II. The order as it may affect the price of residue gas delivered in Texas is not extraterritorial 13

III. The order does not arbitrarily take property or impair the obligation of contracts for no public purpose, in violation of the Due Process and Contract Impairment clauses of the Federal Constitution 15

IV. The order is not invalid as being in conflict with the Natural Gas Act or any existing regulation thereunder 15

Question of Conflict with Jurisdiction of Federal Power Commission under the Natural Gas Act not raised in or decided by the Court below 19

Appendix A.—Opening statement of Phillips Petroleum Company at the hearing before the Oklahoma Corporation Commission on the 9.8262c Order 21

TABLE OF CASES.

American Mfg. Co. v. St. Louis, 250 U. S. 459 14

Aponaug Mfg. Co. v. State Tax Comm., 190 Miss. 805, 1 So. (2d) 763 14

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179 . . . . . 3, 8, 11, 13, 15, 16

Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 591 . . . . . 16, 18

TABLE OF CASES—Continued.

PAGE

Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U. S. 498 ..... 16, 18
Ford Motor Co. v. Beauchamp, 308 U. S. 331 14
Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 427 14
International Harvester Co. v. Evat, 329 U. S. 416 14
International Harvester Co. v. Wisconsin Dept. of Taxation, 322 U. S. 435 14
Interstate Natural Gas Co. v. Federal Power Comm., 331 U. S. 682 ..... 16, 18-19
In the Matter of Michigan-Wisconsin Pipe Line Co., F. P. C. Opinion No. 275 17
In the Matter of Panhandle Eastern Pipe Line Co., F. P. C. Docket Nos. G-1116, G-1240, G-1317, G-1344, G-1417, G-1725, G-1754, and G-2101 17
Maine v. Grand Trunk Ry. Co., 142 U. S. 217 14
Nelson v. Sears, Roebuck & Co., 312 U. S. 359 14
Osborn v. Ozlin, 310 U. S. 53, 62 14
Panhandle Eastern Pipe Line Co. v. Calvert, 347 U. S. 157 ..... 12, 13, 19
Phillips Petroleum Co. v. State of Oklahoma, 340 U. S. 190 ..... 3, 8, 10, 11, 12, 13, 15, 16
Phillips Petroleum Co. v. State of Wisconsin, 347 U. S. 672 ..... 12, 16
State of Wisconsin v. Federal Power Comm., 205 F. (2d) 706 19
Utah Power & Light Co. v. Pfost, 286 U. S. 165 14
Wisconsin v. J. C. Penney Co., 311 U. S. 435 14
Wisconsin v. Minnesota Mining & Mfg. Co., 311 U. S. 452 14

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1954.

No. 320

MICHIGN-WISCONSIN PIPE LINE COMPANY,
Appellant,
vs.
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL., Appellees.*

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,
vs.
THE CORPORATION COMMISSION OF THE STATE OF OLKAHOMA, *ET AL., Appellees.*

No. 322

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,
vs.
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL., Appellees.*

Appeals from the Supreme Court of the State of Oklahoma.

MOTION OF APPELLEE PHILLIPS PETROLEUM COMPANY TO DISMISS.

Appellee Phillips Petroleum Company, pursuant to Rule 16 of the Revised Rules of this Court, moves to dismiss the appeal in each of the above entitled cases on the grounds

(*a*) that the appeals do not present a substantial federal question and (*b*) that in part the federal questions sought to be raised were not timely or properly raised or expressly passed on by the court below.

Statement of Case.

The three cases under consideration are companion appeals[1] from a final judgment and decision of the Supreme Court of the State of Oklahoma[2] sustaining an order of the Corporation Commission of Oklahoma[3] increasing from 7c to 9.8262c per thousand cubic feet the minimum wellhead price or its equivalent a producer must realize as a condition *to the production of gas* in the Guymon-Hugoton Field in Oklahoma.

The Commission in entering the 7c order[4] found that to prevent waste protect the interest of the public and of those having a right to produce from the Guymon-Hugoton Field it was necessary that the producers realize for the gas a minimum of 7c per thousand cubic feet at the wellhead. The order provided "That no natural gas shall be taken out of the producing structures or formations * * * at a price, at the wellhead, of less than 7c per thousand cubic feet * * *." The question immediately arose as to those producers that do not sell their gas at the wellhead but first gather and process the same and then sell or otherwise utilize the resi-

---

1. Although filed as separate appeals, the appellants in cases Nos. 320 and 321 have filed a joint Statement as to Jurisdiction in the two appeals. Appellant in case No. 322, although filing a separate Statement as to Jurisdiction, raises substantially the same questions. All three are presented on a single record. Appellees, The Corporation Commission of Oklahoma and Certain Mineral Owners in Texas County, Oklahoma, have filed their motion to dismiss the appeals or affirm the judgment as a single instrument in the three cases.

2. Entered April 27, 1954. Rehearing denied July 13, 1954. Not yet officially reported but printed in Vol. 25 of The Journal of the Oklahoma Bar Association at page 831. Copy appears as Apepndix A to each of appellants' Statement as to Jurisdiction.

3. Order No. 26096 dated July 29, 1952, and effective August 1, 1952. Copy appears as Appendix B to each of appellants' Statements as to Jurisdiction.

4. Order No. 19514 in Cause CD No. 1054, dated December 9, 1946, effective January 1, 1947.

due elsewhere than at the wellhead. Interpreting the order in such respect, the Commission entered a supplemental order[5] finding that under such circumstances the producer must "realize therefrom *the equivalent* of 7c per thousand cubic feet at the wellhead."

Both the basic 7c order and the supplemental order were before this Court on appeal and sustained in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma*, 340 U. S. 190. The evidence upon which the orders were based is summarized in the opinions of this Court in those cases. The Court there considered the fact that 90 per cent of the gas moved interstate and the effect of the orders on the sale price thereof. Included and considered were the identical oprations and sale by appellee Phillips Petroleum Company to appellant Panhandle Eastern Pipe Line Company of the residue gas involved in the appeals here under consideration. Also considered was the question of the validity of the orders under the Due Process and Contract Impairment clauses of the United States Constitution.

Appellants did not below and do not here question the validity of the 7c order nor the decision of this Court sustaining the same. Instead, they misinterpret and treat the 9.8262c order and its legal effect as different from the 7c order and proceed to reargue all of the questions decided by this Court in respect to the 7c order.

In entering the 9.8262c order involved in these appeals, the Commission found:

> "6. That since the Commission issued its Order No. 19514, the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262c measured at the wellhead at a pressure base of 14.65 pounds absolute per square

5. Order No. 19702 in Cause CD No. 1054, dated February 4, 1947.

inch, constitutes and causes waste, both physical and economic.

"7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevalent in said field results in and causes:

a. Economic waste of a great natural resource, to-wit: natural gas;
b. Actual physical waste of natural gas;
c. Loss to the royalty owners in said field;
d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;
e. Inequitable taking of natural gas from the common source of supply involved;
f. Discrimination against various producers in the field.

"8. • • •

"9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that the price of 7c for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

"10. • • •

"11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the ex-

traction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable service to the purchaser, in that said processing conditions said gas for pipe line transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial investments and incur substantial expenses in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment; and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F.

"12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field, but that residue gas having less than 950 BTU per subic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such resi-

due gas should be in the proportion that the BTU content of such gas bears to 950 BTU per cubic foot.

"13. That for the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton Field, at a price less than 9.8262c per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount realized for gas by producers operating gathering and processing plants."[6]

The Supreme Court of Oklahoma in the decision herein appealed from summarized the evidence supporting such findings and said, "The findings of the Commission are supported by basic facts and the order of the Commission is based on substantial evidence." Such evidence was uncontradicted. The only evidence offered by the appellants herein was as to the volume of gas moving interstate, a fact known and referred to by this Court in the appeals from the 7c order. Based on such findings and evidence, the Commission entered the 9.8262c order, in part providing as follows:

"It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

"1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262c per thousand

6. Finding 14 is obviously an incomplete statement. It can only mean that the minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining whether the amounts realized by producers gathering and processing their own produced gas before selling it is equivalent to the wellhead price.

cubic feet if sold at the wellhead or on the lease or drilling units from which produced, or a price equivalent to not less than 9.8262c per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262c per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262c per thousand cubic feet."

Appellee Phillips Petroleum Company is a substantial producer of gas in the Guymon-Hugoton Field, which is a part of a much larger common source of supply or gas field extending into Texas on the south where appellee is also a producer of gas. Appellee does not sell its gas at the wellhead but first gathers and processes the same for removal of the liquid hydrocarbons present in the gas and then sells the residue for delivery at the exhaust of the processing plants. The residue is in part sold to appellant Panhandle Eastern Pipe Line Company and in part to appellant Michigan-Wisconsin Pipe Line Company under long-term contracts which, for the terms of the contracts, dedicate the production from designated acreage to such contracts. The processing and delivery of the residue gas happens to occur across the state line in Texas merely because of the location of the processing plants. The plants are where they are because of being centrally located in respect to Phillips' leases and gathering operations in both the Oklahoma and Texas portions of the field. The presence of the state line is a mere coincidence.

The interests of the appellants Panhandle Eastern Pipe Line Company and Michigan-Wisconsin Pipe Line Company in these appeals grow out of the aforesaid gas purchase contracts with appellee Phillips Petroleum Company.

The facts pertaining to the interests and relationships of appellee Phillips Petroleum Company and appellants Panhandle Eastern Pipe Line Company and Michigan-Wisconsin Pipe Line Company and the position of appellee Phillips Petroleum Company with reference to the minimum price order under consideration are more fully stated in an opening statement made by Phillips Petroleum Company at the hearing before the Commission, a copy of which is attached hereto as Appendix A. The same facts, except for the deliveries of gas to appellant Michigan-Wisconsin Pipe Line Company which had not then been commenced, were before this Court in the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.* 340 U. S. 179, and *Phillips Petroleum Company* v. *State of Oklahoma,* 340 U. S. 190.

The facts pertaining to and the interest of appellant Natural Gas Pipeline Company of America are substantially the same as the facts pertaining to and the interests of appellants Panhandle Eastern Pipe Line Company and Michigan-Wisconsin Pipe Line Company, except that appellant Natural Gas Pipeline Company of America has a gas purchase contract for the purchase of gas from a producer in the Guymon-Hugoton Field by the name of Panoma Corporation which, like appellee Phillips Petroleum Company, gathers and processes the gas and makes delivery of the residue to Natural Gas Pipeline Company of America after processing, and except for the fact that the processing plant of Panoma Corporation happens to be in Oklahoma and the resulting delivery of the residue gas occurs in Oklahoma.

Appellee Phillips Petroleum Company has never at any time applied for or sponsored the making of the minimum gas price orders by the Corporation Commission of Oklahoma, but in connection with the making of the 9.8262c order here under consideration advocated before the Commission that if it made such an order that it be so written as to apply reasonably and with clarity to producers of gas who did not sell their gas at the wellhead.

Appellants, as a basis for their objections to the 9.8262c order and their claim that the questions presented are different from those decided by this Court in respect to the 7c order, misconstrue the order as one directly regulating the sale, as such, of the gas as distinguished from a *regulation of production* conditioned on what the producer must realize for the gas at or as related back to the wellhead. In so doing they regard the second and third sentences of paragraph 1 of the order, quoted above, as being separate isolated orders regulating different types of sales without relation to the regulation of production. They completely ignore the fact that the second and third sentences, standing alone, are meaningless and can be given meaning only when read in conjunction with the first sentence and the findings upon which the order is based.

The 9.8262c order in language, purpose and effect does nothing more than and is no different from the 7c order, as interpreted by supplemental Order No. 19702, and sustained by this Court, except (*1*) it increases the minimum wellhead price or its equivalent a producer must realize as a condition to production and (*2*) it gives to producers who do not sell at the wellhead a means, without guessing or without a complex accounting problem, of determining when they are receiving a price equivalent to the prescribed minimum wellhead price. It is nonetheless a production order which, for the prevention of waste, the protection of the interests of the public and of those having the right to produce from the Guymon-Hugoton Field, prescribes the minimum wellhead price or its equivalent a producer must realize for the gas as a condition to its production. The second and third sentences of paragraph 1 of the order are merly supplemental to the first sentence and spell out and for clarity define what is required to constitute the equivalent of the wellhead price under certain named conditions prevalent in the field where the gas is not sold at the wellhead. The Commission in support of Finding No. 11 of the order, above quoted, on the basis of the uncontradicted evidence in the record, found that a producer who first gathers and proc-

esses the gas and then sells the residue, to realize a price for such gas equivalent to 9.8262c per thousand cubic feet at the wellhead, must receive for the processed gas a price of not less than 9.8262c per thousand cubic feet.

All are agreed that under the decisions of the Oklahoma Supreme Court and this Court in the *Cities Service* and *Phillips* cases, *supra,* the State of Oklahoma, acting through the Corporation Commission, has the authority to prescribe the minimum price *a producer must realize* as a condition to production of the gas, even though the gas when produced moves directly in interestate commerce. The regulation is of the production, not of the sale. It would be absurd to say that the State has such power where the amount realized results from a sale at the wellhead but that the power does not exist if the gas is utilized or sold by the producer elsewhere than at the wellhead. The State is still interested in what the producer realizes. If the Corporation Commission in this instance could make no requirement as to the price realized by the producer after gathering or processing as a condition to the production of the gas, the Commission would have no control over the production of gas by producers of 88 per cent of the gas in the field who do not sell their gas at the wellhead.[7] Yet this Court in the case of *Phillips Petroleum Co.* v. *State of Oklahoma,* 340 U. S. 190, in respect to this very problem, said, "In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any." This is the basis of the decision of the Supreme Court of Oklahoma herein appealed from. In such respect the court determined, based upon a review by it of the evidence, that "the formula and method established is both reasonable and practical."

---

7. The evidence before the Commission and in the record in this case discloses that only 12 per cent of the production in the Guymon-Hugoton Field is sold at the wellhead.

The Federal Questions Presented Are Not Substantial.

Briefly stated, the questions presented by appellants are whether:

1. The order violates the Commerce clause of the Federal Constitution.
2. The order as applied to residue gas delivered to appellants Michigan-Wisconsin Pipe Line Company and Panhandle Eastern Pipe Line Company in Texas is extraterritorial, in violation of the Due Process clause of the Federal Constitution.
3. The order arbitrarily takes property and impairs the obligation of a contract for no public purpose, in violation of the Due Process and Contract Impairment clauses of the Federal Constitution.
4. The order is incompatible with the jurisdiction of the Federal Power Commission under the Natural Gas Act.[8]

All of the questions so raised, except the question with respect to the Natural Gas Act, were conclusively settled by this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma*, 340 U. S. 190. None presents a substantial federal question. Mr. Justice BLACK, in the *Cities Service* and *Phillips* cases, regarded such questions as being "frivolous."

As will be later discussed, the question with respect to the Natural Gas Act was not raised in or passed on by the court below.

I. *The order does not violate the Commerce clause of the Federal Constitution.*

In respect to its purposes and its effect on interstate commerce, the 9.8262c order is no different whatever from the 7c order. Both were made under authority of the same

8. Raised only by appellants Michigan-Wisconsin Pipe Line Company and Natural Gas Pipeline Company of America.

statute and for the same *identical* purpose. Both prescribe a minimum price *the producers must realize* for the gas *as a condition to its production.* Any refinement of language as to the determination of whether a price received elsewhere than at the wellhead or on the lease where produced is quivalent to the wellhead or lease price does not alter the effect of the order on commerce. Prescribing what that price shall be if the gas is first sold as residue places no more burden nor does it constitute any more of an embargo on interstate commerce than does the fixing of a minimum price at the wellhead. In either instance the producer is prohibited from producing the gas unless a prescribed price is realized.

Thus, what was said by this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma,* 340 U. S. 190, in regard to the validity of the 7c order under the Commerce clause of the Federal Constitution is equally applicable and conclusive in this case and leaves no room for further argument.

Appellants rely strongly upon the decisions of this Court in *Phillips Petroleum Co.* v. *State of Wisconsin,* 347 U. S. 672, and *Panhandle Eastern Pipe Line Co.* v. *Calvert,* 347 U. S. 157. Both cases hold that the sales and movement of the gas here involved are in interstate commerce. That fact, however, has never been questioned and was expressly recognized by this Court in the *Cities Service* case and the case of *Phillips Petroleum Co.* v. *State of Oklahoma.* This Court in the case of *Phillips Petroleum Co.* v. *State of Wisconsin,* in referring to the *Cities Service* case and the case of *Phillips Petroleum Co.* v. *State of Oklahoma,* said, "Those cases upheld as constitutional state minimum price orders, justified as conservation measures, *applying to sales of natural gas in interstate commerce.*"

Although thus alluding to the *Cities Service* case and the case of *Phillips Petroleum Co.* v. *State of Oklahoma,* this Court in *Phillips Petroleum Co.* v. *State of Wisconsin* did not in any way overrule or modify the decision therein

reached as to the Oklahoma minimum price orders, especially in the absence of a conflicting federal regulation. The absence of any conflicting federal regulation will be discussed under subhead IV relating to the order as affected by the Natural Gas Act.

In the case of *Panhandle Eastern Pipe Line Co.* v. *Calvert,* this Court merely held that the incidence of the Texas gas gathering tax there involved was upon the movement of the gas in interstate commerce after production and gathering had ceased, and hence was a direct tax and an unlawful burden on interstate commerce. It had nothing to do with the regulation by the State of Texas of the producer or the production of the gas in the interest of conservation.

II. *The order as it may affect the price of residue gas delivered in Texas is not extraterritorial.*

Although the order may affect the sale of the gas outside the state, it is not a regulation thereof. It is a regulation of the producer and the production of the gas in Oklahoma dependent upon what the producer realizes therefor. The order looks to sales at the end of gathering even though outside the state and the price there received only to determine whether the producer is realizing a price or its equivalent found necessary to prevent waste, protect the interest of the public and of those having a right to produce from the common source of supply, matters of legitimate local concern.

If, as was held by this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.,* 340 U. S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma,* 340 U. S. 190, the State of Oklahoma has an interest in what a producer realizes for the gas as a condition to production, that interest extends to the price realized by the producer therefrom whether at the wellhead or at the end of gathering regardless of state lines. If this were not true, a producer could set at naught the public policy of Oklahoma merely by taking the gas outside the state before selling it.

As was said by this Court in *Osborn* v. *Ozlin,* (1940) 310 U. S. 53, 62:

> "The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids."

In the *Cities Service* and *Phillips* cases, *supra,* this Court has held that the fixing of the minimum price that a producer must realize for the gas as a condition to production is not within that domain which the Constitution forbids.

In the case of *Great Atlantic & Pacific Tea Co.* v. *Grosjean,* (1937) 301 U. S. 412, 427, this Court said:

> "The appellants, by incorporating in some other state, or by spreading their business and activities over other states, cannot set at naught the public policy of Louisiana."

Other cases by this Court holding that the regulation or taxation of activities, if proper within a state, are not invalid as extraterritorial merely because of their effect upon or their being affected by matters or events occurring outside the state, are *American Manufacturing Co.* v. *St. Louis,* (1919) 250 U. S. 459; *Utah Power & Light Co.* v. *Pfost,* (1932) 286 U. S. 165; *Nelson* v. *Sears, Roebuck & Co.,* (1941) 312 U. S. 359; *International Harvester Co.* v. *Evat,* (1947) 329 U. S. 416; *Wisconsin* v. *J. C. Penney Co.,* (1940) 311 U. S. 435; *Wisconsin* v. *Minnesota Mining & Manufacturing Co.,* (1940) 311 U. S. 452; *International Harvester Co.* v. *Wisconsin Dept. of Taxation,* (1944) 322 U. S. 435; *Aponaug Mfg. Co.* v. *State Tax Commission,* (1941) 190 Miss. 805, 1 So. (2d) 763; *Maine* v. *Grand Trunk Ry. Co.,* (1891) 142 U. S. 217; *Ford Motor Co.* v. *Beauchamp,* (1939) 308 U. S. 331.

In fact, the validity of the Oklahoma minimum price orders on this score, although not expressly mentioned, was effectively decided in the *Cities Service* case and the case of

Phillips Petroleum Co. v. *State of Oklahoma, supra,* in that the very same sale of residue gas in Texas by appellee Phillips Petroleum Company to appellant Panhandle Eastern Pipe Line Company here involved was before this Court in those cases wherein the 7c order was held valid. In the *Phillips* case the Court in respect to such sale said, "In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any."

III. *The order does not arbitrarily take property or impair the obligation of contracts for no public purpose, in violation of the Due Process and Contract Impairment clauses of the Federal Constitution.*

Everything said by the appellants in their Statements as to Jurisdiction in this regard was considered and decided by this Court in the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.,* 340 U. S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma,* 340 U. S. 190. There this Court expressly held that it was within the police power of the state to prescribe the minimum price or its equivalent the producer must realize as a condition to the production of gas in the State of Oklahoma. So far as its effect upon property and contract rights is concerned, the only difference between the 9.8262c order here involved and the 7c order involved in those cases is the increase in the minimum price from 7c to 9.8262c per thousand cubic feet. Such increase is amply supported and justified under the evidence and the findings by the Commission. The evidence was reviewed by the Supreme Court of Oklahoma and found to be sufficient. In fact, as before stated, the evidence in this regard was uncontradicted.

IV. *The order is not invalid as being in conflict with the Natural Gas Act or any existing regulation thereunder.*

Although this question was not raised in or passed on by the court below, as will be later discussed, we will briefly

point out that no substantial federal question exists in respect thereof.

This Court in *Phillips Petroleum Co.* v. *State of Wisconsin,* 347 U. S. 672, (pending on petitions for rehearing) held that sales of gas for resale in interstate commerce by producers and gatherers are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act. The Court, however, did not in that case in any way take from or limit the recognized jurisdiction and authority of the states to regulate the physical production of gas in the interest of conservation or of any other consideration of legitimate local concern.

As recognized by this Court in the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.,* 340 U. S. 179, and *Phillips Petroleum Co.* v. *State of Oklahoma,* 340 U. S. 190, the Oklahoma minimum gas price orders constitute an authorized regulation of production by the state. Although the orders may affect the price of the gas, they are a regulation of production and not a regulation of the sale.

Being a valid regulation of production by the state, then under Section 1b of the Natural Gas Act and under the holding of this Court in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.,* 337 U. S. 498; *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U. S. 682; *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U. S. 591, it is unaffected by the Natural Gas Act or any regulation of the Federal Power Commission thereunder.

This is particularly true in the absence of any conflicting regulation by the Federal Power Commission under the Natural Gas Act, as is presently the case. There is in effect no order or regulation by the Federal Power Commission which would indicate that it will not allow producers and purchasers of gas affected by the 9.8262c minimum price order to include in their rate base the minimum price so prescribed by such order.

Counsel for appellants Michigan-Wisconsin Pipe Line Company and Natural Gas Pipeline Company of America in endeavoring to establish some basis for conflict between the actions of the Federal Power Commission and the Oklahoma price order referred in their Statement as to Jurisdiction (p. 10) to a portion of the order of the Federal Power Commission issued July 30, 1954, in Michigan-Wisconsin's rate case, *In the Matter of Michigan Wisconsin Pipe Line Company,* Opinion No. 275. The language of the order referred to was, however, soon corrected and clarified by the Federal Power Commission so that the exact opposite of the situation asserted by counsel for appellants is now the case. On August 17, 1954, the Commission issued an order entitled "Clarification of Statements in Opinion No. 275" wherein the Commission expressly allowed Michigan-Wisconsin to consider as a part of its cost of service in determining its rate base the minimum wellhead price on all gas produced in Oklahoma by Phillips and delivered to Michigan-Wisconsin.[9]

Also, in its opinion and order in *In the Matter of Panhandle Eastern Pipe Line Company,* Dockets Nos. G-1116, G-1240, G-1317, G-1344, G-1417, G-1725, G-1754 and G-2101, issued April 15, 1954, the Federal Power Commission allowed to appellant Panhandle Eastern Pipe Line Company, as a part of its rate base, the weighted average purchase price of gas, which in respect to the Guyman-Hugoton Field in Oklahoma had for its minimum the 9.8262c price prescribed by the Oklahoma minimum price order.

Hence it is that presently there is no conflict between

---

9. In its "Clarification of Statements in Opinion No. 275" adopted August 12, 1954, and issued August 17, 1954, Docket Nos. G-1678 and G-1996, the Commission quoted language from its Opinion No. 275 (including the language alluded to by counsel for appellants here in their statement of jurisdiction) and then said:

> "The Commission hereby corrects and clarifies these statements. On the basis of the record in this docket the Oklahoma minimum well-head price on the entire 6,161,368 Mcf of natural gas produced in the State of Oklahoma, during the test period, and delivered by Phillips to Michigan-Wisconsin represents costs which may be properly considered in determining Michigan-Wisconsin's cost of service."

the Natural Gas Act or any regulation of the Federal Power Commission thereunder and the minimum price order here involved. Until there is such a conflict, no substantial federal question exists.

Appellants Michigan-Wisconsin Pipe Line Company and Natural Gas Pipeline Company of America at page 14 of their Statement as to Jurisdiction in Cases Nos. 320 and 321 make this statement:

> "It should be noted, in this connection, that the Federal Power Commission, by its Order No. 174 issued July 16, 1954, has forbidden Phillips and other companies which sell gas to interstate pipeline companies from suspending any service provided by such sellers on June 7, 1954, without the approval of the Federal Power Commission. Thus, any attempt by Oklahoma to enforce its prohibition of production would squarely contravene the Federal Power Commission's order. Under the Natural Gas Act as under the Commerce Clause itself, therefore, a state may not attempt to prohibit or embargo the production of gas as a means of enforcing payment of a state-fixed price for interstate sales."

The enforcement by the State of Oklahoma of any conservation regulation having for its purpose the regulation or restriction of production in the interest of conservation or other legitimate local purpose would have the same effect in respect to gas moving in interstate commerce. To say that such effect denies to the state the power to so regulate production is to strip the state of all power to regulate production, contrary to the express provisions of the Natural Gas Act and contrary to the express holding by this Court in the cases of *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, *Interstate Natural Gas Co.* v. *Federal Power Commission*, and *Federal Power Commission* v. *Hope Natural Gas Co.*, *supra*. As was said by this Court in the *Interstate* case:

"Clearly, among the powers thus reserved to the states is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the states full freedom in these matters."

This Court in the *Panhandle Eastern* case, *supra*, said:

"The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states."

Until, however, as before stated, such a conflict exists, no substantial federal question is presented.

Question of Conflict with Jurisdiction of Federal Power Commission Under the Natural Gas Act Not Raised in or Decided by the Court Below.

Although appellants at page 30 of their petition for rehearing and supporting brief in the court below briefly allude to the case of *State of Wisconsin* v. *Federal Power Commission*, 205 F. (2d) 706, dealing with the jurisdiction of the Federal Power Commission over sales of gas, they do so only as establishing that the sales here involved are in interstate commerce and that hence the minimum price order violates the Commerce clause of the Constitution. Nowhere in their assignments of error in the Supreme Court of Oklahoma nor in their briefs nor in said petition for rehearing do appellants in any way raise the question or discuss the validity of the 9.8262c minimum price order as it relates to the Natural Gas Act or the jurisdiction of the Federal Power Commission thereunder. Nor is the question decided or in any way referred to by the Oklahoma Supreme Court in its opinion in these cases. The question is raised by appellants Michigan-Wisconsin Pipe Line Company and Natural Gas Pipeline Company of America for

the first time in this Court. Therefore no substantial federal question is raised.

We respectfully submit, therefore, that the appellants present no substantial federal question for the decision of this Court and that the appeals should be dismissed.

RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
KENNETH HEADY,
Phillips Building,
Bartlesville, Okla.,
CECIL C. HAMILTON,
1211 First Nat'l Bldg.,
Oklahoma City, Okla.,
Attorneys for Appellee,
Phillips Petroleum Company.

APPENDIX A.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an Order Determining the Minimum Price at Which Gas Produced from the Guymon-Hugoton Field May Be First Purchased or Sold.—Cause CD No. 3628; Order No. 26096.

OPENING STATEMENT OF PHILLIPS PETROLEUM COMPANY AT THE HEARING BEFORE THE OKLAHOMA CORPORATION COMMISSION ON THE 9.8262c ORDER.

"Without being understood as supporting the proposed increase of the minimum price of gas in the Guymon-Hugoton Field and without waiving the right to object thereto under the evidence in this proceeding, Phillips Petroleum Company proposes to introduce evidence and show to the Commission the facts and circumstances pertaining to its operations and to urge that if an order is written increasing the minimum price that it be so written as to apply reasonably and with clarity to producers and gatherers of gas in the position of Phillips.

"Phillips in respect to its operations in the Guymon-Hugoton Field, is primarily a producer of gas from its own wells and leases. It does not sell its gas at the wellhead but by means of its own gathering lines and gasoline plants gathers and processes the same for the removal of the liquid hydrocarbons present in the gas and then sells the residue gas for delivery at the exhaust of the plants. In addition, Phillips has made contracts with certain other producers for the purchase of their gas, which it thus gathers, processes and handles in the same manner as it does its own produced gas.

"The size and extent of its operations are evidenced by the fact that Phillips in the Guymon-Hugoton Field owns oil and gas leases on approximately 173,000 acres of land

on which it has drilled and is operating 198 wells having a daily average production during February 1952 of approximately 72 million cubic feet of gas. It has contracts for the purchase of gas from approximately 75,000 additional acres of land on which other producers have drilled and are operating 61 wells having a dairly average production during the same period of approximately 23 million cubic feet of gas. The production from its own leases was 14 per cent of the total production of the field. The gas so purchased was 4.4 per cent of the field total. Taken together the volume of gas so produced and purchased by Phillips was 18.4 per cent of the total field production.

"The gasoline plants and points of sale and delivery of the residue gas to which reference is made, although located in Texas a few hundred yards south of the Oklahoma-Texas state line and hence technically outside the so-called Guymon-Hugoton Field, are nonetheless in the same field from which the gas is produced and gathered. The name 'Guymon-Hugoton Field' is of course but the designation by this Commission of the Oklahoma portion of the much larger common source of supply or gas field extending into Kansas on the north and Texas on the south. Phillips also has leases on a large amount of land in the Texas portion of the field from which it gathers gas along with additional gas purchased from other producers, which is likewise processed in the same plants and the residue is sold to the same purchasers. So far as the physical character of the field and its operations is concerned, the presence of the state line is but a mere coincidence. The plants are where they are and the residue is there sold merely because of being centrally located in respect to Phillips' leases and gathering operations in both the Oklahoma and Texas portions of the field.

"All of the gas so gathered and processed in one of the plants, known as the Hansford Plant, is sold at the exhaust of the plant to Panhandle Eastern Pipe Line Company under a long term contract. Under such contract Phillips dedicated all of the gas produced from certain of its

leases to such contract and sale. All of the gas so gathered and processed in the other plant, known as the Sherman Plant, is sold at the exhaust of the plant to Michigan-Wisconsin Pipe Line Company under long term contracts. Under the latter contracts Phillips dedicated all of the gas produced from other of its leases and the gas so purchased to such contract and sale.

"The price presently in effect under the Panhandle Eastern contract is 4.5c per Mcf on a 16.4-pound pressure base, which is 4.03c per Mcf on a 14.65-pound puressure base. The average price presently in effect under the Michigan-Wisconsin contracts for Oklahoma gas is 7.59c per Mcf on a 14.65-pound pressure base plus possible accretions not yet established.

"The value of and the price that can be received for the liquid hydrocarbons recovered from the gas so processed are controlled by market conditions generally and what products of like kind and character are at the time selling for on the open market. As a result, such value and price vary from time to time.

"Likewise, the costs of gathering and processing the raw gas and of marketing the products, which must be taken into account in determining the value or price attributable to the gas at the wellhead before gathering and processing, fluctuate from time to time dependent upon many factors and conditions.

"Presently Phillips is receiving gross for the residue gas and liquid products recovered from gas processed in the Sherman Plant something more per Mcf of gas produced than the 9.8262c wellhead price herein proposed. The net proceeds, however, after allowance for costs of gathering, processing, marketing of products, taxes, without allowing any return on investment, are somewhat less than the proposed wellhead price. In the case of the Hansford Plant, the gross receipts per Mcf of gas produced, gathered and processed are substantially less than the proposed wellhead price.

"In spite of the fluctuating value of the liquid products

and changing costs, Phillips foresees no likelihood of a change that would substantially alter the foregoing relationship of gross or net returns to the proposed wellhead price.

"If, therefore, the Commission should grant the application herein and merely increase the 7c minimum wellhead price to the proposed 9.8262c price at the wellhead, without further provision as to the producer, gatherer and processor that does not sell at the wellhead, Phillips will be immediately confronted with a number of serious problems threatening substantially its entire investment and operations in the Guymon-Hugoton Field. They are:

"1. How can Phillips, in respect to its own produced gas, get an amount for the residue and the liquid products therefrom which, after deducting gathering and processing costs, taxes and a reasonable return on investment, will attribute to the raw gas the prescribed price at the wellhead, thereby permitting production thereof? It has no other market for its gas or products than that above stated. The liquid products are bringing gross the maximum obtainable therefor.

"2. If Phillips approaches Panhandle Eastern Pipe Line Company and Michigan-Wisconsin Pipe Line Company, telling them that it must get more for the residue gas in order to produce its wells, how is it or the residue purchasers to know how much must be paid therefor in order to comply with the Commission order? Must such price vary from day to day with the fluctuating costs of operation and varying returns from the liquids? Will the Commission and the residue purchasers at all times agree with Phillips' method of arriving at such costs and the returns from the liquids?

"3. How will the order affect the situation in respect to gas which Phillips as a gatherer purchases and for which it must pay the prescribed minimum wellhead price but for which it in turn has no market for the residue and liquid products that will result in anything but a loss from its gathering and processing operations? Is Phillips to be penalized for providing other producers with a market for their gas?

"4. In connection with its gathering and processing operations, some of the gas produced at the wellhead is used for fuel purposes or is lost through shrinkage at the plant. How can Phillips pay itself or get for such gas a price that will comply with the order when there has been no sale thereof in any form? The same question arises in respect to any use to which a producer may want to put its gas other than to make a sale thereof. How under the order is a producer to evaluate such use?

"5. Must Phillips abandon entirely its gathering and processing operations and seek a market for the raw gas at the wellhead?

"These are some of the questions which the Commission must, or at least should, take into consideration before it makes an order herein. Unless the Commission intends to arbitrarily and capriciously say that no gas shall be produced unless *sold* at the wellhead, then to be reasonable and realistic it must make an order providing a method or formula whereby the producer or gatherer that does not sell at the wellhead can determine what price is to be obtained elsewhere to comply with the order, or, in other words, how the producer is to know whether or not the price or the return so received elsewhere than at the wellhead is equivalent to the prescribed wellhead price. It is not enough to merely say that a certain price at the wellhead must be obtained. In respect to the present 7c price order, the Commission avoided such questions in respect to Phillips by its order declaring that Phillips was in compliance therewith. No such order is possible in respect to the proposed increased minimum price order, especially as applied to gas gathered and processed in the Hansford Plant. Nor can it be said that by merely paying royalty and taxes on the basis of the prescribed wellhead price, as was argued by the Commission in its brief in the appeals from the 7c price order, constitutes compliance, because to do so merely multiplies the producer's costs many times and if there is any merit in the theory that higher returns to the producer are necessary to prevent waste, such an increase in

costs without any increase in returns would be waste compounded.

"We ask the Commission to take into account the fact that properties, investments and matters with which the Commission is dealing involve many millions of dollars. As of now, after allowing for depreciation to date, Phillips has invested in the Hansford and Sherman Plants and the gathering systems serving those plants, in excess of 19 million dollars. Its investment in wells, leases and lease equipment in the field amounts to many millions of dollars more. The matter of developing or acquiring a market for gas is not simple. It is complex and has many ramifications requiring time, much negotiating, figuring and refiguring, as well as a large outlay of money. The Hugoton Field lay idle for many years after its discovery for want of a market at any price. Phillips, in good faith, set about to help find and develop the desired markets. The Commission should not now ignore all of the factors involved by a mere six-line order that on its own face purports to deal only with sales at the wellhead. Is there anything wrong with a producer gathering and selling the gas or gathering and processing the same and then selling the residue? It is being done and is a condition in the field. A suit is now pending in the courts involving the application of the present order to just such a situation. That's the case of the Panoma Corporation against the Natural Gas Pipeline Company of America. The Commission must take this condition into account.

"To conclude, Phillips Petroleum Company asserts that if the Commission determines that an order should be made increasing the minimum price, the Commission most assuredly should make such provision in its order as will reasonably protect a producer and gatherer such as Phillips."* (R. 281-290)

*In making this statement to the Commission, Mr. R. M. Williams read from a prepared statement. Because of the numerous errors appearing in the statement as transcribed in the Record, and in order that it may be more easily read by the Court, we have quoted from Mr. Williams' prepared statement rather than from the actual record.

LIBRARY
SUPREME COURT, U.S.

No. 331

Office - Supreme Court, U. S.
FILED
MAR 11 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

JOINT BRIEF OF APPELLEES

MAC Q. WILLIAMSON,
Attorney General of Oklahoma
FLOYD GREEN,
T. MURRAY ROBINSON,
HUGH B. COX,
BURKE MARSHALL,
RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
KENNETH HOAR,

INDEX

Page

Opinions Below 1

Jurisdiction 2

Statutes and Constitutional Provisions Involved 2

Questions Presented 2

Statement of the Case 3

A. The Parties and Proceedings Before the Corporation Commission of Oklahoma 3

B. The Increase in the Minimum Price 5

C. The Formula Applicable to Gas Sold in the Field During or at the Conclusion of Gathering 9

D. The Commission's Order and the Opinion of the Supreme Court of Oklahoma 12

Summary of Argument 15

Argument 18

I. The Order Here is not Invalid under the Commerce Clause by Reason of the Provisions Relating to Sales of Gas Made in the Field during Gathering or at the Conclusion of Gathering and Processing 18

A. This Court Held in Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, That the Commerce Clause Does not of its Own Force Invalidate State Minimum Price Regulation of Gas Sold Interstate 18

B. This Court's Decision in the Cities Service Case Treated the Order There as Applicable to All Gas Produced in the Field and not as Limited to Gas Sold at the Wellhead 23

C. The Formula Applicable to Sales of Gas after Gathering and Processing is an Appropriate and Reasonable Exercise of the State's Power to Establish Minimum Prices in the Interests of Conservation and Should be Upheld for That Reason 25

II. The Natural Gas Act Does not Deprive the State of Oklahoma of the Power to Conserve Natural Gas by Minimum Price Regulation of All Gas Produced in the Field Including the Gas Produced and Delivered by Panoma 31

Page

A. This Court Should Uphold the Validity of Order No. 26,096 so as to Preserve Both the Plan of Regulation Envisaged by the Natural Gas Act and the Conservation Powers of the State 31

B. A Decision Upholding Order No. 26,096 Will Achieve the Intent of Congress to Protect and Preserve the Conservation Powers of the States 41

Conclusion 48

CITATIONS

Cases:

Algoma Plywood Co. v. *Wisconsin Employment Relations Board*, 336 U.S. 301 41
Buck v. *California*, 343 U.S. 99 35
Bandini Petroleum Co. v. *Superior Court, Los Angeles County, Calif.*, 284 U.S. 8 44
California v. *Zook*, 336 U.S. 725 41
Champlin Refining Co. v. *Corporation Commission of Oklahoma*, 286 U.S. 210 44
Cities Service Gas Co. v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279 (1950), 340 U.S. 179 ....4, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 31, 37, 47, 48
Federal Power Commission v. *Hope Natural Gas Co.*, 320 U.S. 591 41
Federal Power Commission v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 .....32, 39, 40, 41, 43
Geer v. *Connecticut*, 161 U.S. 519 45
Henderson Co. v. *Thompson*, 300 U.S. 258 44
Illinois Natural Gas Co. v. *Central Illinois Public Service Co.*, 314 U.S. 498 32
Interstate Natural Gas Co. v. *Federal Power Commission*, 331 U.S. 682 .....17, 32, 35, 40, 41
Milk Control Board v. *Eisenberg Farm Products*, 306 U.S. 346 26
Milk Wagon Drivers Union v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287 7
Minneapolis & St. Louis R.R. Co. v. *Minnesota*, 193 U.S. 53 .. 7
Missouri v. *Kansas Natural Gas Co.*, 265 U.S. 298 45
Natural Gas Pipeline Co. v. *Corporation Commission*, 272 P. 2d 425 (1954) 1, 6, 7, 11, 12, 13, 14, 15, 49
Natural Gas Pipeline Co. v. *Panoma Corporation*, 271 P. 2d 354 (1953) 4
New York Rapid Transit Corp. v. *New York*, 303 U.S. 573 .. 28

Page

New York ex rel. Silz v. *Hesterberg*, 211 U.S. 31 45
Northern Natural Gas Co., FPC Docket Nos. G-1382, G-1533, G-1607 34
Ohio Oil Company v. *Indiana* (No. 1), 177 U.S. 190 44
Panhandle Eastern Pipe Line Co. v. *Michigan Public Service Commission*, 341 U.S. 329 .....18, 32, 35, 36, 37, 38
Panhandle Eastern Pipe Line Co. v. *Public Service Commission, of Indiana*, 332 U.S. 507 .....37, 38, 39
Parker v. *Brown*, 317 U.S. 341 .....29, 30, 35
Pennekamp v. *Florida*, 328 U.S. 331 7
Phillips Petroleum Co. v. *Oklahoma*, 340 U.S. 190 .....4, 10, 13, 16, 23, 24, 30
Phillips Petroleum Co. v. *Wisconsin*, 347 U.S. 672 .....15, 17, 31, 40, 47, 48
Public Utilities Commission v. *Attleboro Steam & Electric Co.*, 273 U.S. 83 45
Public Utilities Commission of Ohio v. *United Fuel Gas Co.*, 317 U.S. 456 32
Simpson v. *Shepard* (*The Minnesota Rate Cases*), 230 U.S. 352 36
South Carolina State Highway Department v. *Barnwell Brothers, Inc.*, 303 U.S. 177 .....26, 30, 45
Southern Wisconsin Railway v. *Madison*, 240 U.S. 457 28
State Corporation Commission of Kansas v. *Federal Power Commission*, 206 F. 2d 690 (8th Cir. 1954), cert. denied 346 U.S. 922 .....18, 34
Thompson v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55 .. 44
Walls v. *Midland Carbon Co.*, 254 U.S. 300 44

Federal Legislation:

Agricultural Marketing Agreement Act (50 Stat. 246, 7 U.S.C. § 601 *et seq.*) 35
Constitution, Art. I, Sec. 8, Cl. 3 .....2, 3, 16, 18, 19, 20, 29, 44
Constitution, Amendment XIV 10, 19, 44
Interstate Commerce Act Sections 13(3), 13(4) (41 Stat. 484 (1920); 49 U.S.C. §§ 13(3), 13(4)) 36
Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821, as amended by Act of February 7, 1942, ch. 49, 56 Stat. 83, Act of July 25, 1947, ch. 333, 61 Stat. 459, Act of March 27, 1954, 68 Stat. 36), 15 U.S.C. § 717 *et seq.* 2, 3, 16, 17, 19, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49

Federal Legislative Documents:

Report of Federal Trade Commission pursuant to Sen. Res. 83, 70th Cong., 1st Sess. (1928) 41
H. R. Rep. 2651, 74th Cong., 2nd Sess. 42

Page

H. R. Rep. 709, 75th Cong., 1st Sess. 42, 43
Sen. Rep. No. 1162, 75th Cong., 1st Sess. 42
Sen. Rep. No. 1460, 82nd Cong., 2d Sess. 42
Sen. Rep. No. 817, 83rd Cong., 1st Sess. 42
H. R. Rep. No. 899, 83rd Cong., 1st Sess. 42
Cong. Rec. Vol. 81 43

State Statutes and Orders:

1913 Gas Act and 1915 Natural Gas Act of the State of Oklahoma (Oklahoma Statutes, Tit. 52, §§ 231, 232, 233, 234, 239, 240 and 243 (1951) 2, 27
Oklahoma Corporation Commission Order No. 19,514 ..4, 6, 8, 10, 15, 16, 18, 19, 21, 23, 27, 37
Oklahoma Corporation Commission Order No. 26,096 ..2, 3, 8, 12, 13, 15, 16, 17, 21, 26, 27, 28, 29, 31, 33, 40, 41, 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

JOINT BRIEF OF APPELLEES

OPINIONS BELOW

The opinion of the Supreme Court of Oklahoma (R. 165-188) is reported at 272 P. 2d 425. The findings and order of the Corporation Commission of the State of Oklahoma (R. 132-137) are unreported.

JURISDICTION

The basis for jurisdiction is adequately stated in appellant's brief.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provision of the United States Constitution is the Commerce Clause, Article I, § 8, Clause 3. The pertinent provisions of the Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821, as amended, 15 U.S.C. § 717 *et seq.*) are set forth in Appendix A. The pertinent provisions of the 1913 Gas Act and 1915 Natural Gas Act of the State of Oklahoma (Oklahoma Statutes Title 52 §§ 231, 232, 233, 234, 239, 240 and 243) and Order No. 26,096 of the Corporation Commission of the State of Oklahoma, effective August 1, 1952, are set forth in Appendix B.

QUESTIONS PRESENTED

Upon application of certain mineral royalty owners in Texas County, Oklahoma, and after hearings, appellee Corporation Commission of Oklahoma made findings and issued Order No. 26,096, effective August 1, 1952, which is the order challenged in this appeal. The order reads in part as follows (R. 136-137):

> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less

than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.'"[1]

The questions presented are:

1. Whether the Commerce Clause of the United States Constitution of its own force invalidates Order No. 26,096 as applied to the Panoma Corporation which produces and gathers natural gas, processes it for the extraction of liquid hydrocarbons and then delivers the residue gas at the outlet of its processing plant to appellant Natural Gas Pipeline Company for transmission and resale interstate.

2. Whether the Natural Gas Act (15 U.S.C. § 717 *et seq.*) deprives the State of Oklahoma of the power to apply Order No. 26,096 to the natural gas delivered by Panoma Corporation to appellant Natural Gas Pipeline Company as described above.

STATEMENT OF THE CASE

A. The Parties and Proceedings Before the Corporation Commission of Oklahoma

In 1947 the Corporation Commission of Oklahoma, upon application of the Peerless Oil & Gas Company, the School Land Commission of the State of Oklahoma and certain royalty owners, determined that the taking of natural gas from the Guymon-Hugoton Field at the prices then prevalent resulted in economic and physical waste, inequitable taking of gas and discrimination against various producers. It therefore

[1] Residue gas is the term applied to natural gas after it has been dehydrated and the liquid hydrocarbons removed.

ordered that no gas should be taken out of the producing structures or formations of the Guymon-Hugoton Field at a price at the wellhead of less than 7¢ per thousand cubic feet (R. 235-242).[2] This order was appealed to the Supreme Court of Oklahoma and upheld there. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279 (1950). The decision of the Oklahoma court was unanimously affirmed by this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179. See also *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190.

In January 1952 certain mineral owners in Texas County, Oklahoma, filed an Application before the Corporation Commission, alleging that although some gas was being produced in the field at the price of 7¢ in accordance with the Commission's order, recent negotiated sales had been made at a price equal to not less than 9.8262¢ at the wellhead. The Application asked that the Commission enter a new order fixing a minimum price for the sale, purchase and acquisition of gas produced from the Guymon-Hugoton Field (R. 10). Among other things the Application alleged that a higher price would prevent waste, that the present price situation caused unlawful discrimination between producers, that the gas was worth not less than 10¢ per thousand cubic feet and that the

---

[2] The application of the 7¢ order to the transactions between Panoma Corporation and appellant Natural Gas Pipeline Company was upheld by the Supreme Court of Oklahoma in Natural Gas Pipeline Co. v. Panoma Corporation, 271 P. 2d 354 (1953). The appeal from that decision of the Supreme Court of Oklahoma is now pending in No. 191 in this Court. Appellant Natural Gas Pipeline Company filed a joint brief in its behalf in No. 191 and in this case. Because a different order, different issues and different appellees are involved in the two cases, appellees here and in No. 191 are filing separate briefs.

7¢ order was vague and uncertain in fixing a method by which the minimum could be realized (R. 10).

The Corporation Commission held hearings on this Application on February 20 and 21, 1952 and July 8 and 9, 1952 (R. 132). Various interstate transmission companies—appellant Natural Gas Pipeline Company, Panhandle Eastern Pipe Line Company, Michigan-Wisconsin Pipe Line Company, Northern Natural Gas Company, and Cities Service Gas Company—appeared at the hearings in opposition to the order. Phillips Petroleum Company entered an appearance neither supporting nor opposing the increase in the minimum price but urging that any order entered establish with clarity a formula informing producers not selling at the wellhead how to comply with it (R. 79). In addition, counsel appeared on behalf of the Office of Price Stabilization, the staff of the Corporation Commission, and the Applicants (R. 11).

During the hearing witnesses testified and documentary evidence was introduced on behalf of the Applicants (Exhs. 11-21; R. 12-66, 203-213) and in support of the position of Phillips Petroleum Company (Exhs. 33-40; R. 67-126, 215-224). The other interested parties, including appellant Natural Gas Pipeline Company, although producing no witnesses, filed responses to the Application, entered into stipulations on evidentiary matters and otherwise participated in the hearings (Exhs. 47-50; R. 126-132, 138-143, 243-275).

B. The Increase in the Minimum Price

On the basis of the evidence before it the Corporation Commission made the following findings, among others, on the necessity for an increase in the minimum price (R. 134-136):

(a) The taking of gas from the Guymon-Hugoton Field at the then prevalent prices and terms resulted in economic and physical waste and discriminated against various producers (R. 134).

(b) The price of 7¢ for gas from the Guymon-Hugoton Field was "no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available" (R. 135).

(c) Commodity values in general and the use value of gas in particular had increased since the 7¢ order to such a point that the production and sale of gas in the Guymon-Hugoton Field at any price less than 9.8262¢ measured at the wellhead constituted and caused physical and economic waste (R. 134).

The evidence supporting these findings was reviewed by the Supreme Court of Oklahoma and the findings of the Commission upheld (R. 167-171, 174). The court's summary of the evidence reads in part as follows (R. 173-174):

"There is substantial evidence to the effect that the prevalent price of raw gas in this field (seven cents per thousand cubic feet as fixed by previous order) will not, under present economic conditions prevailing, such as cost of labor and materials, permit the drilling of wells in fringe areas, resulting in non-development of the field, migration of gas to wells in production to the loss of

> landowners in fringe areas, and incomplete exhaustion of the gas-bearing structures, all to the loss of landowners, producers, and the State of Oklahoma generally. Such facts constitute both physical and economic waste and amply justify the Commission's order on that factor. Certainly such facts clearly show inequitable taking from the common source of supply, irreparable harm to correlative rights of owners, loss to royalty owners, and loss to the State and are sufficient to sustain the interest of the state in correcting such abuses."

Neither the Commission's findings on the need for an increase in the minimum price of gas produced in the Guymon-Hugoton Field in the interest of conservation nor the affirmation of those findings by the Supreme Court of Oklahoma appear to be challenged by appellant on this appeal.[3] In any case the findings of the Commission are fully supported by substantial evidence. The proof showed that since the last order of the Commission there had been a change in circum-

---

[3] There is no assertion in the questions presented in the brief of appellant (Brief p. 3) that any findings of the Corporation Commission of Oklahoma are not supported by substantial evidence and no attack is made on the order in this case under either the due process or the equal protection clauses of the Fourteenth Amendment. Furthermore, appellant has no basis for asking this Court to review or to evaluate the evidence supporting the findings of the Corporation Commission, affirmed as they are by the Supreme Court of Oklahoma. *Cf.*, Pennekamp v. Florida, 328 U.S. 331, 345; Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U.S. 287, 294; Minneapolis & St. Louis R.R. Co. v. Minnesota, 193 U.S. 53, 64.

stances requiring a higher minimum.[4] Since that time the cost of production of natural gas had risen and the market demand for gas had increased substantially (R. 54). These factors caused economic upward pressure on the price. In addition, an increase in the price of gas was shown to tend to conserve gas and prevent physical and economic waste (R. 57). The higher price would allow marginal wells on the fringe of the field to be developed which could not profitably be developed at a lower price (R. 27-28, 57-58). Higher prices would make less wasteful methods of production economically feasible and this would tend to eliminate the physical waste caused by the necessity of blowing out wells (R. 26-27). The time factor was important. A higher price for gas was necessary at the time to insure proper development of the marginal areas of the field. If fringe wells were not drilled soon, part of the gas might migrate and be taken through existing wells. This would cause loss to the fringe owners. In addition, however, much of the gas could not be recovered through the existing wells. If fringe wells were not drilled prior to the abandonment of the rest of the field there would be by that time little recoverable gas left and probably no marketing facilities available to take what was left (R. 27-28, 57-58).

The evidence also showed that since the issuance of the 7¢ order the price of all industrial fuels other than natural gas had increased substantially (Exhs. 11-21;

---

[4] As stated at pp. 3-4, *supra*, the Corporation Commission had previously fixed the minimum price at which gas could be produced from the Guymon-Hugoton Field at 7¢ per thousand cubic feet at the wellhead (Exh. 44; R. 235-242). Both the 7¢ order and the present order based the price on gas measured at a pressure of 14.65 pounds absolute pressure per square inch (R. 137, 242).

R. 26, 48-49, 203-213). In comparison with the other common industrial fuels—coal, residual, crude oil, kerosene and gasoline—natural gas had been and continued to be the most desirable and at the same time the cheapest fuel per energy content unit (R. 26). Yet the gap between the costs of natural gas and the costs of the other fuels had increased since 1946 (Exhs. 13, 17; R. 205, 209).

Finally, the proof showed that the price mentioned in the Application—9.8262¢ per thousand cubic feet at the wellhead—would not be in excess of the actual value of the gas in the Guymon-Hugoton Field but would correspond to that value as evidenced by the more recent contracts (R. 55-56). That was the price specified, for example, in a contract recently negotiated between the Northern Natural Gas Company and the American Gas Production Company for gas produced in the Guymon-Hugoton Field (R. 54-55).[5] The testimony contained various estimates of prices above 10¢ which would be fair prices for the gas. These ranged from 12.64¢ per thousand cubic feet (R. 49) to a price of between 25¢ to 30¢, a price which would be comparable on an energy content basis with that of other industrial fuels (R. 43).

C. The Formula Applicable to Gas Sold in the Field During or at the Conclusion of Gathering

In addition to the proof establishing the need for an increase in the minimum price of gas in the Guy-

[5] The figures given in the testimony refer to a price of 11¢ per thousand cubic feet measured on the basis of a pressure of 16.4 pounds absolute pressure per square inch (R. 55). This amounts to 9.8262¢ per thousand cubic feet measured on the basis of 14.65 pounds absolute pressure per square inch, which is the measure used by the Corporation Commission.

mon-Hugoton Field the Commission received evidence on the need, as a practical matter, for the Commission to establish in the order a formula which could be followed by producers who sell in the field during or at the conclusion of gathering rather than at the wellhead.[6] This evidence related both to the methods by which gas is produced and sold in the Guymon-Hugoton Field and to the reasonableness of the particular formula which was ultimately incorporated in the order.

On the basis of this evidence the Commission made findings which read in part as follows (R. 135-136):

> "That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; * * * that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a

---

[6] The prior 7¢ order of the Commission had been attacked by Phillips Petroleum Company on the ground that because the order omitted to include any such formula it was so vague and indefinite that it violated the Fourteenth Amendment. That attack was rejected by this court in Phillips Petroleum Company v. Oklahoma, 340 U.S. 190.

reasonable allowance for depreciation and return on investment; and that such producers, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F."

The Supreme Court of Oklahoma reviewed the evidence (R. 171-172) and accepted these findings (R. 174). The court said in part (R. 174):

"To have any regulation at all, to insure that all gas produced from the structures in this field shall be sold at the same minimum price it was necessary to fix the price of residue gas and the evidence is substantial to show that such price must be the same as that of raw gas to attain this end. See *Phillips Petroleum Co.* v. *Oklahoma,* 340 U.S. 190, 71 S. Ct. 221, 95 L. ed. 204.

"These findings of the Commission are supported by basic facts and the order of the Commission is based on substantial evidence."

Appellant does not appear to challenge these findings of the Commission on the ground that they are not supported by the evidence or to contend that the Supreme Court of Oklahoma erred in accepting the findings. Those contentions if made would find no support in the record because the findings were fully supported by the evidence. A summary of the more important evidence follows:

Only about 12.4% of the allowable production from the Guymon-Hugoton Field is sold at the wellhead (R.

125). Panoma Corporation, the sole supplier in the Guymon-Hugoton Field to appellant Natural Gas Pipeline Company, does not make any deliveries of gas at the wellhead (Exhs. 47-48; R. 127-128, 247-271). Phillips Petroleum Company, one of the largest producers in the Field, does not sell any gas at the wellhead with the possible exception of gas from one well in which it owns a minor interest (R. 69). Both Panoma and Phillips, as well as at least one other company in the Field, gather their gas after production through a network of converging pipelines to a central point where it is processed for the extraction of liquid hydrocarbons and to make the residue salable. The gas is then delivered at the outlet of the processing plant for transmission to consuming areas (Exh. 47; R. 71-76, 94, 127-128).

In operations such as those of Panoma and Phillips, the value of the liquid hydrocarbons extracted from the gas on the average approximately offsets the costs of the gathering and processing operation (Exh. 39; R. 112, 114-116, 118-121, 223). For example, in 1951 the spread between the costs of gathering and processing and the gross income from the extracted liquids in Phillips' case was less than a quarter of a cent per thousand cubic feet of gas (Exh. 39; R. 223). During some periods at one plant these costs actually exceeded the income from liquids (R. 116). The testimony showed that Phillips' cost and income figures would be typical for other producers conducting similar operations (R. 104, 119).

D. The Commission's Order and the Opinion of the Supreme Court of Oklahoma

On the basis of all this evidence and its findings, the Corporation Commission entered Order No. 26,096, which is quoted in part at pages 2-3, *supra*. The order

was challenged by appellant Natural Gas Pipeline Company and by Michigan-Wisconsin Pipe Line Company and Panhandle Eastern Pipe Line Company by Petitions in Error filed in the Supreme Court of Oklahoma (R. 1-8). That court upheld the order in an opinion filed April 27, 1954, with one justice concurring specially and four justices dissenting (R. 178).

The petitioners in the Supreme Court of Oklahoma contended in part that Order No. 26,096 was not supported by the evidence and was beyond the power of the Corporation Commission (R. 172). These contentions were rejected by the Supreme Court of Oklahoma (R. 174, 178). The statutory power of the Corporation Commission to issue the order is not challenged here and it appears from appellant's statement of the questions presented in its brief that it does not contest the evidentiary support for the findings (Brief p. 3).

In addition, the petitioners in the Supreme Court of Oklahoma attacked the order under the Commerce Clause, both as an unconstitutional regulation of interstate commerce and as imposing an unlawful embargo on interstate commerce. The Supreme Court of Oklahoma ruled in favor of the Corporation Commission on this contention also. It said that the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, were conclusive on the power of the Commission to fix a minimum price as a condition precedent to the taking of natural gas (R. 175). It also considered and upheld the formula established by the order applicable to a producer selling not at the wellhead but at the conclusion of gathering and after the extraction of the liquid hydrocarbons. On this subject the court said in part (R. 175-177):

> "The only new question presented here is: may the Commission establish a method or formula by

which it can be ascertained whether a producer who does not sell raw gas at the wellhead obtains the equivalent of the fixed minimum price of raw gas as taken from the structures? and if so and to implement the obtaining of such equivalent price can the Commission add to the cost of raw gas which is not processed before sale but is sold off the lease the reasonable cost of gathering, or in case the raw gas is processed for the removal of liquid hydrocarbons before actual delivery to the purchaser, fix the price of the residue gas being only one constituent of the raw gas, so delivered? * * *

* * *

"It seems self-evident and axiomatic that if the Commission has the power to regulate by fixing minimum prices it has the power to establish a formula and method by which it may be ascertained and determined whether all producers in the field are obtaining such minimum price, as it is their inescapable duty to do. It is only necessary that a formula or method so established be reasonable and practically effective to carry out the purpose for which it is made. * * *

* * *

"All parties concede that under the cases above the Commission can fix the price of gas as taken from the structure. If it can fix the price of the whole it can fix the price of all the parts constituting the whole. If it is not practically feasible to fix the price of all the parts constituting the whole it can fix the price of that constituent which can be controlled, provided it does it in a reasonable manner and so that the overall purpose is

carried out. Under the evidence it seems that the Commission established the only formula which it could establish that would be workable and not be discriminatory or arbitrary. * * *"

The decision of the Supreme Court of Oklahoma was announced on April 27, 1954 (R. 165) prior to the decision of this Court in *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672. The issue of the effect of that decision was raised by an amended petition for rehearing filed July 2, 1954 by Michigan-Wisconsin Pipe Line Company and appellant Natural Gas Pipeline Company (R. 193-194). The petition for rehearing was denied without opinion on July 13, 1954 (R. 198).

Natural Gas Pipeline Company, Panhandle Eastern Pipe Line Company, and Michigan-Wisconsin Pipe Line Company filed separate appeals to this Court on August 7, 1954 (R. 199-201). On November 8, 1954 this Court noted probable jurisdiction in this case, which involves only the application of Order No. 26,096 to the gas delivered by Panoma Corporation to appellant Natural Gas Pipeline Company (R. 285). No order noting probable jurisdiction or otherwise has been entered in the appeals of either Michigan-Wisconsin Pipe Line Company (No. 320) or Panhandle Eastern Pipe Line Company (No. 322).

SUMMARY OF ARGUMENT

I.

In 1946 the State Corporation Commission of Oklahoma promulgated an order forbidding the taking of gas from the Guymon-Hugoton Field at a price at the wellhead of less than 7¢ per thousand cubic feet. That order was upheld by this Court in *Cities Service*

Gas Co. v. *Peerless Oil & Gas Co.*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190. The order did not expressly set a formula to be followed by producers who sold not at the wellhead but during or at the conclusion of gathering and after the extraction of liquid hydrocarbons, even though it was construed to apply, and in fact applied, to such producers. *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190. The present order establishes such a formula. In this respect the only difference between the two orders, therefore, is that the order challenged in this case makes explicit what was true by construction of the order upheld in the *Cities Service* case. It is this difference that is relied upon by appellant.

The Corporation Commission found, and it is not questioned here, that the formula established in the present order was necessary to the achievement of the purpose of the order. This finding is sufficient to uphold the validity of the order under the Commerce Clause unless the *Cities Service* case is to be overruled. The local interest protected by the order is the interest of the State of Oklahoma in the conservation of its natural resources and the prevention of the economic and physical waste of natural gas. The price order which protects that interest in this case is reasonable and necessary and appropriately related to the interest protected, and should be upheld for that reason.

II.

The price order being proper under the Commerce Clause as such, the only remaining question before this Court is whether Congress has enacted legislation which deprives Oklahoma of its otherwise valid conservation powers. It is contended by appellant that Congress has done this by the Natural Gas Act as

interpreted by this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, because that case construed the Natural Gas Act as granting to the Federal Power Commission jurisdiction to fix the rates on sales of gas in interstate commerce such as those made here by Panoma Corporation to appellant Natural Gas Pipeline Company. This argument misconceives the nature of the Oklahoma regulation. It is a conservation order fixing minimum prices applied to the production of natural gas and not an order imposing the kind of regulation authorized by the Natural Gas Act. The argument also misconceives the intention of Congress in passing the Natural Gas Act. Congress did not intend to intrude Federal power at all into the field of conservation in which Oklahoma's price order is effective. On the contrary, Congress expressly and specifically intended not to invade that field. Under the Natural Gas Act federal authority is confined to public utility regulation of maximum rates in the interests of the consumer. The Natural Gas Act should be construed so as to preserve both the state conservation power and the federal utility regulation.

It may be that in the future in specific instances federal rate and service regulation may conflict with particular state conservation measures regulating the production of natural gas, or that state regulations may interfere with or hamper federal regulation. In the event such a conflict does arise in the future, this Court may then have to decide whether Congress intended the state or the federal order to prevail. *Cf. Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690. There are, however, no opposing directives and no conflict present in this case. In the light of the history of the Natural Gas Act this Court should not presume such a conflict will arise or

attempt to predetermine it. On the contrary, the resolution of such conflicts should wait until they occur in a specific situation with existing opposing directives. If this is done the conflicts can be resolved without general disruption of either state or federal power. See *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U.S. 329, 336. *Cf. State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 696 (8th Cir. 1954), cert. denied 346 U.S. 922.

ARGUMENT

I.

THE ORDER HERE IS NOT INVALID UNDER THE COMMERCE CLAUSE BY REASON OF THE PROVISIONS RELATING TO SALES OF GAS MADE IN THE FIELD DURING GATHERING OR AT THE CONCLUSION OF GATHERING AND PROCESSING.

A. THIS COURT HELD IN CITIES SERVICE GAS CO. v. PEERLESS OIL & GAS CO., *340 U.S. 179, THAT THE COMMERCE CLAUSE DOES NOT OF ITS OWN FORCE INVALIDATE STATE MINIMUM PRICE REGULATION OF GAS SOLD INTERSTATE*

The type of conservation regulation which is under attack in this case was upheld five years ago by the unanimous decision of this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179. Many of the issues which are raised here are determined by the decision in that case.

Order No. 19,514 of the Corporation Commission of Oklahoma which was before this Court in the *Cities Service* case provided in part as follows (R. 242):

> "* * * no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma at a price, at the wellhead, of less than 7¢

per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch."

This order was coupled with an order requiring Cities Service Gas Company to purchase ratably from Peerless Oil & Gas Company at a price of 7¢. Cities Service was shown to be a natural gas company, as defined in the Natural Gas Act, engaged in the business of producing natural gas and transporting it interstate. Practically all of the gas produced and purchased by Cities Service in Oklahoma went into interstate commerce. The order was also generally applicable to all producers in the Guymon-Hugoton Field, about 90% of the total production of which was ultimately consumed in states other than the State of Oklahoma. See *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, 181.

In 1950 the Supreme Court of Oklahoma sustained Order No. 19,514 against contentions that it violated, among other things, the Fourteenth Amendment and the Commerce Clause of the Constitution. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279 (1950). On appeal, this Court unanimously affirmed the decision of the Oklahoma court. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179.

That ruling is controlling on the question of the basic validity under the Commerce Clause of state minimum price regulation as a method of conservation. The *Cities Service* opinion expressly considers and rejects several of the arguments advanced by appellant here in its attack on the constitutional power of the State of Oklahoma to effectuate minimum price regulation in the Guymon-Hugoton Field.

For example, appellant argues (Brief pp. 21-25)

that the Commerce Clause of its own force invalidates the order here because there is an overriding national interest in the free interstate flow of natural gas which automatically precludes any assertion of state power. In rejecting this argument the Court said in the *Cities Service* case (340 U.S. at 187-188):

> "That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. * * *
>
> "We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. * * * Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause."

Appellants also appear to argue that the order is invalid because there is evidence in the record that some royalty owners might benefit from it (Brief pp. 23-25, 26). A parallel argument was advanced and considered in the *Cities Service* case. The Court said (340 U.S. at 187):

> "The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation."

Finally appellant urges that Order No. 26,096 is invalid even under the criteria of the *Cities Service* case because its effect is to discriminate against and place an embargo on interstate commerce (Brief pp. 25-28). In making this argument, appellant relies primarily on the undisputed fact that most of the gas produced in the Guymon-Hugoton Field is ultimately consumed in states other than the State of Oklahoma. From this fact appellant argues that the purpose of the minimum price order must be to discriminate against interstate commerce because there is no showing that there is any minimum price order applicable to other fields in the State of Oklahoma from which less gas is ultimately taken out of the State.

This argument is without merit. The fact that the State Corporation Commission has not set minimum prices in fields other than the Guymon-Hugoton Field is not proof of discrimination against interstate commerce. There is no proof in the record on the age of other fields, on conditions in them, on the number of fields involved or on the precise price levels prevailing in them. In addition, there is no evidence on the conservation problems raised in other fields, and particularly on the different conservation problems raised by the development of oil fields as against dry gas fields such as the Guymon-Hugoton Field. Finally, the contention that the 7¢ order discriminated against interstate commerce was raised and rejected in the *Cities Service* case[7] and on this issue also the Court's

---

[7] This Court in summarizing the contentions made by the appellant in that case in the Supreme Court of Oklahoma noted that the appellant argued that "* * * the general rule applying only to the Guymon-Hugoton Field, discriminates against those producing or purchasing in that field." (340 U.S. at p. 184).

holding there is controlling in this case (340 U.S. at 188).

Moreover, this issue is not properly before this Court and was not even before the Supreme Court of Oklahoma. In its Petition in Error in the Supreme Court of Oklahoma appellant Natural Gas did not assign as error that the Corporation Commission intended to discriminate, or had discriminated, against interstate commerce (R. 1-8). The portion of the Petition in Error which relates to the Commerce Clause makes no comparison between the Guymon-Hugoton Field and other producing fields, and does not suggest that the fact that the order relates solely to that Field establishes a discrimination against interstate commerce (R. 7). In this Court neither the notice of appeal nor the jurisdictional statement states the question presented in terms that raise any question of discrimination; they rather both use terms applicable to any order in any field.[8]

It thus appears that appellant's argument is in part an attempt to revive issues that are foreclosed by the decision of this Court in the *Cities Service* case. No further consideration of those contentions seems necessary. We turn therefore to appellant's contention that the present order is invalid because, unlike

---

[8] The statement of the questions presented does not mention the Guymon-Hugoton Field but simply states broadly that the question is whether the Corporation Commission has the power "to fix the price of residue gas sold at the outlet of a gasoline plant to an interstate pipeline company for immediate transportation to markets in other states, or to prohibit the production of natural gas if the price fixed for residue gas obtained therefrom is not obtained" (R. 201). Not even the form of the question stated to be presented in appellant's brief expressly raises any question of discrimination (Brief p. 3).

the order in the *Cities Service* case, it expressly prescribes a formula to determine whether a producer, such as Panoma, who delivers gas at the end of gathering and processing has obtained the equivalent of the prescribed minimum price.

B. THIS COURT'S DECISION IN THE CITIES SERVICE CASE TREATED THE ORDER THERE AS APPLICABLE TO ALL GAS PRODUCED IN THE FIELD AND NOT AS LIMITED TO GAS SOLD AT THE WELLHEAD

Although the 7¢ minimum price order which was involved in the *Cities Service* case contained no formula applicable to field sales made away from the wellhead that order was applied not only to sales at the wellhead, but to all sales in the field, including sales made at the conclusion of gathering and after processing. This was known to the Court at the time it decided the *Cities Service* case. In a companion case, *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, this Court was faced with and decided constitutional claims grounded on the fact that the order was applicable to Phillips Petroleum Company which was selling not at the wellhead but at the conclusion of gathering and after the extraction of liquid hydrocarbons. This Court upheld the application of the order to Phillips. In doing so it noted the fact that Phillips' sales were sales of residue gas to an interstate transmission company made after processing and at the conclusion of gathering (340 U.S. at 191). The Court said that these distinctions did not make any legal difference. The opinion reads in part (340 U.S. at 192):

> "The distinction is without a difference: the connection between realized price and conservation applies to all production in the field, whether owners purchase from others or not, and whether

> they own pipe lines or not. In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any."

No question under the Commerce Clause was raised in the *Phillips* case. Nevertheless, the existence of that case shows that the Court was aware when it decided the *Cities Service* case that the order was applicable to and was in fact applied to sales of residue gas made after processing.

The Court's knowledge of this point is indicated in its opinion in the *Cities Service* case. At the beginning of the opinion the Court stated the issue as relating to "the power of a State to fix prices at the wellhead on natural gas produced within its borders and sold interstate." (340 U.S. at 180). This language does not refer to gas "sold at the wellhead". In fact, two sentences later the Court's language shows that the order was not limited to gas sold at the wellhead. The Court said that the order "set a minimum wellhead price on *all* gas taken from the Guymon-Hugoton Field" (emphasis supplied). The word "all" in this sentence must be read in the light of the fact that there was at the same time before the Court the fact situation presented in the *Phillips* case, in which the major point was that the gas involved was residue gas not sold at the wellhead. In other portions of its opinion the Court refers to "the field price of gas" as having a direct bearing on conservation (340 U.S. at 182), to a "general order setting a minimum price in the field" (340 U.S. at 185), to "existing low field prices" as resulting in economic waste (340 U.S. at 186), to the "field price as herein set" as having little effect on the

domestic delivered price (340 U.S. at 187) and again to the price regulation as applicable to "*all* gas taken from the field" (340 U.S. at 188). These constant references to the "field price" of gas and the two references to the order as applying to "all gas" in the field cannot be reconciled with the contention of appellant that the Court was treating the order as if it applied only to gas sold at the welhead and did not apply to residue gas sold in the field at the conclusion of gathering and after processing.

Furthermore, the reasoning by which the Court reached its conclusion did not depend upon any distinction between sales made at the wellhead and sales made in the field at the end of gathering and processing. The Court regarded the case as turning on the relationship between the legitimate local interest of the state in conserving a natural resource and the national interest in interstate commerce in natural gas. It appraised this relationship on the basis of the relevant economic considerations and without regard to whether field sales of natural gas were made at the wellhead or at some other location in the field. It would be inconsistent with the stated basis for the decision to assume that the Court would have decided the case differently if the particular sale before it had been a sale after gathering and processing rather than a sale at the wellhead.

C. THE FORMULA APPLICABLE TO SALES OF GAS AFTER GATHERING AND PROCESSING IS AN APPROPRIATE AND REASONABLE EXERCISE OF THE STATE'S POWER TO ESTABLISH MINIMUM PRICES IN THE INTERESTS OF CONSERVATION AND SHOULD BE UPHELD FOR THAT REASON

On any view of its scope the *Cities Service* case establishes that the state possesses power to fix minimum prices for gas in the interests of conservation

and that the power may be validly applied to gas destined for interstate markets. This power of the state to fix minimum prices at the wellhead in the interests of conservation carries with it the authority to adopt reasonable and appropriate measures to make that power effective. See *Milk Control Board* v. *Eisenberg Farm Products*, 306 U.S. 346, 352; *South Carolina State Highway Department* v. *Barnwell Bros., Inc.*, 303 U.S. 177, 190. On the facts the instant order is such a reasonable and appropriate measure.

The evidence before the Corporation Commission showed that most gas in the Guymon-Hugoton Field is not sold at the wellhead (R. 135). It also showed that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and that the residue is then sold during or at the conclusion of gathering (*ibid.*). The Commission found that "a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount [may be] realized for gas by producers operating gathering and processing plants" (R. 136). Appellant does not challenge the evidence or this finding.

In the light of this evidence and finding the Corporation Commission had to adopt some formula to be applied to gas sold away from the wellhead and after processing as is the situation in the case of the sales by Panoma to appellant. Otherwise no minimum price order in the Guymon-Hugoton Field could be effective. The formula which the Commission did adopt is neither arbitrary nor unreasonable. It is unrealistic to view it, as appellant does, as if it were some form of price regulation apart from and performing a different function from the one performed by the rest of the order.

The order in its entirety, including the formula relating to sales made after gathering and processing, is a regulation of production. It was issued under a state statute which authorizes regulation of the "taking" of natural gas from the structures of the field. That statute is a part of a comprehensive plan for the regulation of production in the interests of conservation, a plan which has existed for the last four decades.[9]

The order imposes upon the producer a condition to the taking of gas from structures of the field. Its purpose is to prevent the production of gas unless the producer is first assured of a market at the price specified in the order. The fact that the condition is stated in terms of a minimum price applicable after the gas is taken from the ground makes the order no less a regulation of production. It is not unusual for conservation measures directed to production to be phrased in terms of the use to be made of the gas after it leaves the ground. This is true for example of regulations prohibiting the flaring of gas or its use for the manufacture of carbon black, measures which have long been recognized as appropriate conservation regulations of production.

---

[9] The Corporation Commission acted under Sections 239 and 243 of Title 52 of the Oklahoma statutes. These sections authorize the Commission to "regulate the taking of natural gas" to prevent waste and to "make regulations for the prevention of waste of natural gas." The related sections of Title 52 provide for the ownership of unproduced gas, for the protection of correlative rights, and for ratable taking and proration orders. Title 52, Sections 231-233, 240. See Cities Service Gas Co. v. Peerless Oil & Gas Co., 203 Okla. 35, 220 P. 2d 279 (1950), affirmed 340 U.S. 179, upholding the prior 7¢ order as a regulation of the taking of gas under these statutes.

The true character of the order is not obscured by the fact that in this case Panoma has agreed to deliver the gas to appellant after gathering and processing rather than at the wellhead (Exh. 48; R. 247-271). That agreement, like most such agreements, in the producing field, provides for the production of gas; it affects the legal status of gas which is still in the ground and it does so even before the gas wells are drilled.[10] The order affects the contract only because of its impact on the production of the gas which the contract contemplates and requires. Thus, the order imposed a condition upon subsequent production by Panoma but had no effect upon gas produced at the time the order was issued.

Throughout its argument appellant places unwarranted emphasis on the fact that Panoma delivers residue gas for transmission in interstate commerce. Even though the deliveries are made "in" interstate commerce or are "a part of" interstate commerce, as appellant asserts, that does not mean that Order

---

[10] It was this aspect of the contract that the Oklahoma Supreme Court had in mind when it referred to the contract as providing for the sale of gas "in place" and "before any movement of any kind starts and before anything in the nature of interstate commerce occurs * * *" (R. 176). This is an accurate description of the practical effect of the contract. The validity of the court's observation does not depend on such technical questions as where title passes. Nor does it depend on whether the description of the contract as calling for a sale of gas "in place" is accurate in all respects and for all purposes. The contract in question is governed by Oklahoma law, and is the kind of contract with which the Oklahoma court must be assumed to be peculiarly familiar. Its interpretation of the contract should be accepted by this Court. *Cf.* New York Rapid Transit Corp. v. New York, 303 U.S. 573, 593; Southern Wisconsin Railway v. Madison, 240 U.S. 457, 461.

No. 26,096 is invalid in whole or in part. The fact that the gas moves in interstate commerce is no more a reason for striking down the regulatory measure of the state here than it was in the *Cities Service* case where the gas similarly was destined for interstate markets. Here, as in that case, the order is designed to control production and is made in the interests of conservation. For that reason its validity is not to be determined merely by a reference to the fact that it affects transactions which occur in interstate commerce. See *Parker* v. *Brown*, 317 U.S. 341. In that case the Court upheld the validity under the Commerce Clause of a California proration program setting minimum prices on a raisin crop of which 95% was eventually sold interstate or in foreign commerce (317 U.S. at 359). After discussing the technical question whether the sales were "in interstate commerce" and using the language relied upon by appellant (Brief p. 30), the Court repudiated in the following terms any mechanical test such as is urged by appellant here (317 U.S. at 362-363):

> "Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct,' * * * not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character, and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may be wide scope for local

> regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause. * * * There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it."

This principle is applicable here. As the Court has pointed out, it was necessary for the Corporation Commission to regulate the production of all the gas in the field or there would be little point in regulating any. *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 192. This is true because gas accumulates in a common underground reservoir so that conservation can be effective only by rules applicable to the whole of a reservoir regardless of the particular scope or legal nature of the operations of the various producers. The means of regulation chosen by Oklahoma are thus "reasonably adapted" to the legitimate end which the State seeks and the order should be upheld for that reason. See *South Carolina State Highway Department* v. *Barnwell Brothers, Inc.*, 303 U.S. 177, 190.

II.

THE NATURAL GAS ACT DOES NOT DEPRIVE THE STATE OF OKLAHOMA OF THE POWER TO CONSERVE NATURAL GAS BY MINIMUM PRICE REGULATION OF ALL GAS PRODUCED IN THE FIELD INCLUDING THE GAS PRODUCED AND DELIVERED BY PANOMA.

A. THIS COURT SHOULD UPHOLD THE VALIDITY OF ORDER NO. 26,096 SO AS TO PRESERVE BOTH THE PLAN OF REGULATION ENVISAGED BY THE NATURAL GAS ACT AND THE CONSERVATION POWERS OF THE STATE

The only substantial question in this case that is left open by the decision in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, is whether the Natural Gas Act invalidates the order of the Oklahoma Corporation Commission. In *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, this Court construed the Natural Gas Act as authorizing federal regulation of prices charged for gas sold in interstate commerce for resale and delivered after processing into an interstate transmission line. Under this decision the prices of gas delivered by Panoma to appellant are subject to federal regulation. Appellant contends that it necessarily follows that the order here involved is invalid as applied to Panoma's deliveries of gas to appellant.

This argument misconceives the nature of the state regulation that is here involved. The state order imposes minimum price regulation on production in the interests of conservation. This is a different kind of regulation from that which the Federal Power Commission is authorized to impose under the Natural Gas Act. The Federal Power Commission is empowered to prescribe maximum prices for sales in interstate commerce for resale for the purpose of protecting consumers against unreasonably high rates. The State of Oklahoma has not attempted to exercise regulatory

authority of that kind and it is error to treat its order as if it were the equivalent of a rate making order by the Federal Power Commission.

No doubt within the area and for the purposes prescribed by Congress the authority of the Federal Power Commission is paramount and exclusive. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498; *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U.S. 456. But it is equally true that the Natural Gas Act did not deprive the states of their power to regulate the production of natural gas in the interests of conservation. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 509-513; *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690. On the contrary the statute was designed to confirm the state in the possession and exercise of those powers. Thus, the statute contemplates a system of dual regulation wherein federal and state authority will each play its appropriate role. *Cf. Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U.S. 329, 337. The grant of exclusive authority to the Federal Power Commission within the area of its competence does not invalidate or nullify a legitimate exercise by a state of its authority to regulate production in the interests of conservation.

When, as in the instant case, a proper exercise by the state of its authority to fix minimum prices in the interests of conservation reaches transactions which are subject to regulation by the Federal Power Commission, though in a different way and for different purposes, the problem is one of adjusting the two powers so as to preserve the dual system of regulation contemplated by Congress.

In the instant situation adjustment is not prevented by any inevitable and inherent inconsisteney between the two regulatory powers involved. The standards that guide the exercise of the two powers are different but not incompatible. This case need not and should not be decided on the assumption that there is a conflict of regulatory directives. No such conflict exists; Panoma has not been directed to do one thing by the state and a different thing by the Federal Power Commission. Nor is there reason to assume that in the future it will be subject to conflicting orders. This Court should not presume that the Federal Power Commission, in exercising its jurisdiction under the Natural Gas Act, will act in disregard of the legitimate interests of the State of Oklahoma in the conservation of its natural resources. The Federal Power Commission has not appeared in this case. It has not made any contention tha the price order promulgated by Oklahoma is an attempt to deprive the Commission of its jurisdiction over any producer or will in any way conflict with the exercise of the Commission's statutory functions under the rate and service provisions of the Natural Gas Act. Nor should the Court presume that the Corporation Commission of Oklahoma has fixed or will fix minimum prices for the production of natural gas in the Guymon-Hugoton Field that are so high as to transgress the maximum rate standards of the Natural Gas Act.

The Court is not here required to make a jurisdictional choice between two competing authorities each seeking to control the same subject matter in the same way and for similar ends. The Court can here sustain the state's exercise of its conservation authority without usurping or interfering with any authority conferred upon the federal agency. It is, of course,

conceivable that in the future here or in some other instances a state minimum rate order made in the interests of conservation may, as applied to particular transactions, conflict with a maximum rate order made by the Federal Power Commission. But if any such situation should ever arise it will not represent a conflict of jurisdictions since both state and federal agency will each be acting within the sphere allocated to it by the statute. It will be time enough to solve the problems created by specific conflicting directives when the problems arise.[11] Until that time comes the theoretical possibility of such conflicts does not justify striking down a legitimate exercise of state power made within

---

[11] In State Corporation Commission of Kansas v. Federal Power Commission, 206 F. 2d 690 (8th Cir. 1954), cert. denied 346 U.S. 922, an alleged specific conflict between a state minimum price order and federal rate regulation was resolved without serious disruption of either state or federal power because the conflict was treated in the light of a particular case and as part of the issues raised by the regulation of a particular company. In that case it was contended that the actual cost method of rate regulation followed by the Power Commission conflicted with the Kansas order setting a minimum price to be realized at the wellhead by producers in the Kansas portion of the Hugoton Fields. Because the company involved was selling the gas at a price in excess of the minimum fixed at the wellhead and the only question was what cost the company should be allowed in the computation of its rate base, it may be doubted whether any conflict in fact existed. See the opinions of Commissioners Buchanan and Smith in Docket Nos. G-1382, G-1533, G-1607, In the Matters of Northern Natural Gas Company. The Commission's rate order was upheld by the United States Court of Appeals for the 8th Circuit, 206 F. 2d 690. At the same time the efficacy of the Kansas statute was only partially impaired, if at all, since no general or abstract attack upon its constitutionality was made.

the conservation area which has been reserved for state action.[12]

This Court in the past has had occasion to consider contentions that state regulatory action taken within the area reserved to the states under the statute is inconsistent with federal authority because it affects activities which are also subject for some purposes to federal regulation. This Court has refused to accept those contentions or to strike down state power in the absence of a showing that there is an immediate conflict of directives.

In *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U.S. 329, the question was whether the state could validly require Panhandle to obtain a certificate of public convenience and neces-

---

[12] Compare the situation in Parker v. Brown, 317 U.S. 341, 352-358, where this Court interpreted the Agricultural Marketing Agreement Act (50 Stat. 246, 7 U.S.C. § 601 *et seq.*) as contemplating the existence of state marketing programs "at least until such time as the Secretary shall establish a federal marketing program" (317 U.S. at 354). See also Buck v. California, 343 U.S. 99, 102.

If a direct and specific conflict should ever arise between a state conservation order prescribing minimum prices and a maximum rate order of the Federal Power Commission, the Court would be faced with the question whether Congress intended that the federal or the state order should prevail. The Court has previously indicated that the history of the Natural Gas Act shows that Congress intended that federal power and not the state power should retreat when a federal order is inconsistent or a substantial interference with the exercise of the state's conservation powers. See Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682, 690. But even if it should be assumed that the federal order should prevail in the case of a direct conflict between specific orders directed to a particular company, it does not follow that a state minimum price order should be declared invalid, either generally or as applied to any company, until a direct and specific

sity before selling natural gas to industrial consumers in a municipality already served by another public utility. Such direct sales to industrial consumers are not subject to regulation under the Natural Gas Act. By reason of its other activities, however, Panhandle was a natural gas company and was being regulated by the Federal Power Commission. Under the Natural Gas Act Panhandle was required to obtain from the Federal Power Commission a certificate for the construction and operation of the facilities to be used in delivering the gas to the particular industrial consumers involved. In other words, to engage in the activity which the state was seeking to regulate Panhandle also had to obtain the statutory sanction of the Federal Power Commission. Even so, this Court sustained the validity of the state regulation.

The Court's opinion emphasized that Congress had not gone to the full extent of its power in the Natural Gas Act but had on the contrary "occupied only a part of the field." (341 U.S. at 334). The Court observed that this contemplated dual regulation which might in some instances result in an overlap of, or even a conflict between, state and federal regulatory action. Nevertheless the Court held that that possibility did not require invalidation of state action operating in a field other than the field exclusively reserved for federal

---

conflict occurs. At the very least the plan of regulation contemplated by Congress in the Natural Gas Act is to be regarded as analogous to the dual regulation created by Sections 13(3) and 13(4) of the Interstate Commerce Act (41 Stat. 484 (1920); 49 U.S.C. §§ 13(3), 13(4). These sections grant the Interstate Commerce Commission authority to raise intrastate rates to prevent discrimination against interstate commerce but contemplate that state regulations of the same rates will remain effective until the Commission issues a conflicting order. See Simpson v. Shepard (The Minnesota Rate Cases), 230 U.S. 352.

regulation, at least in the absence of direct proof of conflict by way of "opposing directives." (341 U.S. at 336). The opinion relied on the decision in the *Cities Service* case, 340 U.S. 179, which upheld Oklahoma's 7¢ minimum price order, to show that Panhandle's interstate activities did not free it from state regulation. Any other result would fail to "accomplish the effective dual regulation Congress intended, and would permit appellant to prejudice substantial local interest." (341 U.S. at 337).

In its opinion the Court also quoted from *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana,* 332 U.S. 507. In that case the Court had held that the State of Indiana could regulate direct industrial sales by an interstate transmission company whose transportation activities and sales for resale in interstate commerce were at the same time being regulated by the Federal Power Commission. The Court emphasized the division of regulatory authority over natural gas between federal and state authority in the following terms (332 U.S. at 519-520):

> "It would be an exceedingly incongruous result if a statute so motivated, designed and shaped to bring about more effective regulation, and particularly more effective state regulation, were construed in the teeth of those objects, and the import of its wording as well, to cut down regulatory power and to do so in a manner making the states less capable of regulation than before the statute's adoption. * * *
>
> * * *
>
> "The Natural Gas Act created an articulate legislative program based on a clear recognition of the respective responsibilities of the federal and

> state regulatory agencies. It does not contemplate ineffective regulation at either level. We have emphasized repeatedly that Congress meant to create a comprehensive and effective regulatory scheme, complementary in its operation to those of the states and in no manner usurping their authority. * * *"

The *Indiana* and *Michigan* cases were concerned with the provisions of the Natural Gas Act exempting local distribution of natural gas from regulation. The structure of the jurisdictional sections of the Act shows that the principle applied in those cases should apply as well to state measures which regulate production in the interests of conservation because those measures relate to an activity, production and gathering, which is also exempt from regulation.

Section 1(b) of the Act first describes what the Act applies to. It says that the Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale, and to companies engaged in such transportation or sale. It is this provision of Section 1(b) which subjects Panoma's sales of gas to appellant to federal rate regulation.

The second half of Section 1(b), however, specifies the fields of natural gas regulation to which the Act does not apply. The first such field is the local distribution of natural gas. This is the exempted field in which the states were acting in the *Indiana* and *Michigan* cases, *supra*. Parallel to that exemption and following after it is the exemption of "the production or gathering of natural gas." The state order here involved regulates the activity of production and hence falls within this exemption. The following statement

in the *Panhandle Indiana* case, treating the exemptive language of Section 1(b) as constituting a congressional affirmation of the existence of state power in the field of local distribution, is therefore also applicable, by reason of the structure of Section 1(b), to the exercise of state power that is here involved (332 U.S. at 521):

> "The Natural Gas Act therefore was not merely ineffective to exclude the sales now in question from state control. Rather both its policy and its terms confirm that control. More than 'silence' of Congress is involved. The declaration, though not identical in terms with the one made by the McCarran Act, 59 Stat. 33, 15 U.S.C. § 1011, concerning continued state regulation of the insurance business, in in effect equally clear, in view of the Act's historical setting, legislative history and objects, to show intention for the states to continue with regulation where Congress has not expressly taken over. Cf. *Prudential Ins. Co.* v. *Benjamin*, 328 U.S. 408. Congress has undoubted power to define the distribution of power over interstate commerce. *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, 769, and authorities cited; cf. *Prudential Ins. Co.* v. *Benjamin, supra.* Here the power has been exercised in a manner wholly inconsistent with exclusion of state authority over the sales in question."

This Court has indicated in dealing with the production and gathering exemption that it considers that exemption to block out a field of regulation in which Congress intended affirmatively that the states and not the federal government should act. *Federal Power*

Commission v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498; *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690. In the *Panhandle* case the Court said (337 U.S. at 509-513):

> "The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views."

We are not suggesting that Panoma's sales to appellant are immune from federal regulation by reason of the production or gathering provision of Section 1(b). That point is settled by *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672. The issue here is not the extent of federal power but the existence of state power to regulate the physical activity of production in the interests of conservation. The production or gathering language of Section 1(b), as construed and applied by this Court, shows that Congress intended that a state should be free to regulate the activity of production. Order No. 26,096, even though it operates on price, is a

regulation of the physical activity of production. The scope of federal power need not be considered unless and until the state order conflicts with a specific directive issued by the Federal Power Commission. No such conflict exists and the order of the State of Oklahoma should be sustained.

B. A DECISION UPHOLDING ORDER NO. 26,096 WILL ACHIEVE THE INTENT OF CONGRESS TO PROTECT AND PRESERVE THE CONSERVATION POWERS OF THE STATES

This Court has said that it will not attribute to Congress a purpose to displace state legislation in the absence of a specific expression of intent. *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board,* 336 U.S. 301, 312; *California* v. *Zook*, 336 U.S. 725, 733. The legislative history of the Natural Gas Act shows beyond question that Congress expressly intended not to supersede or interfere with state authority over conservation problems. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.,* 337 U.S. 498, 509-513; *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U.S. 682, 690; *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U.S. 591, 612-613.

The Natural Gas Act states in Section 1(a) that it is based upon disclosures made by the Report of the Federal Trade Commission pursuant to Sen. Res. 83, 70th Cong., 1st Sess. (1928). That Report covered in detail the problems of the natural gas industry. It emphasized the powerful position of the transmission companies and the effect of the position and practices of those companies on the conservation efforts of the states (Report pp. 112-113, 610, 613-614). Its recommendations in this area specifically endorsed principal reliance upon state and not upon federal action in the

field of conservation. Primary responsibility was placed in state measures such as ratable taking and common purchaser statutes, unitization and proration, to be reenforced if necessary by a federal statute designed to do no more than prohibit the introduction into interstate commerce of gas produced in violation of the state acts (Report p. 616).

Moreover, each of the three reports made by the Congressional Committees recommending enactment of natural gas legislation stated in so many words that the Act was designed not to oust the states of any authority. These reports stated flatly, with only minor variations in language, that the bill took no authority from the state commissions and was so drawn as to complement and in no sense usurp state regulatory authority. H.R. Rep. 2651, 74th Cong., 2d Sess., p. 1 (1936); H.R. Rep. No. 709, 75th Cong., 1st Sess., p. 2 (1937); Sen. Rep. No. 1162, 75th Cong., 1st Sess., p. 2 (1937).[13]

---

[13] The basic congressional purpose was recently affirmed by the last Congress. In 1954 an amendment to Section 1 of the Natural Gas Act was enacted providing that the Act should not apply under certain conditions to persons transporting gas wholly within one state so long as their activities were certified to be subject to the state regulatory authority. 68 Stat. 36 (1954). The Senate Committee on Interstate and Foreign Commerce, reporting in favor of this bill, stated that its purpose was to reaffirm the original intent of Congress in enacting the Natural Gas Act—"namely, that the Act was to supplement, and not supplant State regulation." Sen. Rep. No. 817, 83rd Cong., 1st Sess., p. 1 (1953). Similar language was used by the House Committee (H. R. Rep. No. 899, 83rd Cong., 1st Sess., p. 1), and in the previous Congress a report from the Senate Committee referred back to the original Senate Report on the Natural Gas Act (Sen. Rep. No. 1162, 75th Cong., 1st Sess.) and quoted particularly the language of that Report that there was no intention to disturb the states in the legitimate exercise of the regulatory functions. Sen. Rep. No. 1460, 82nd Cong., 2d Sess., p. 5 (1952).

The statements of the persons in charge of the legislation in both the House and the Senate show that there was no question of intruding in any way upon any state power. In the House the bill was in charge of Congressman Lea, its author and the Chairman of the House Committee on Interstate and Foreign Commerce. At the beginning of his statement on the bill, Lea said expressly that the "bill takes nothing from the State Commissions; they retain all the State power they have at the present time." 81 Cong. Rec. 6721. In the Senate the bill was in charge of Senator Wheeler, the Chairman of the Senate Committee on Interstate Commerce which had reported on the bill. During the debates, in answer to a question from Senator King, Senator Wheeler stated that he wanted "to say to the Senator that, as a matter of fact, the bill does not interfere with the State regulation, in any way, shape, or form." 81 Cong. Rec. 9312.

Appellant points to the fact that each of the Committee Reports made on the legislation prior to its passage stated that the basic purpose of the bill was "to occupy this field in which the Supreme Court has held that the states may not act." See, for example, H. R. Rep. No. 709, 75th Cong., 1st Sess., p. 2. Appellant's reliance on this language overlooks the congressional identification of the "field" which federal power was to occupy. The field is described as one in which the states could not act. It was as apparent in 1936 and 1937 as it is now that one field in which the states have full freedom to act is the field of conservation. At the time the statute was under consideration the producing states had enacted and were enforcing comprehensive regulatory schemes for the conservation of gas. See *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498.

512-513. This Court had not then been called upon to decide whether a state in the exercise of its conservation powers could impose minimum prices on the production of gas destined for interstate commerce. Accordingly, although there were no decisions holding such state regulation invalid, there were no decisions expressly upholding it.

This Court had held however that a state proration program was not invalid under the Commerce Clause because it applied to oil destined for sale in interstate commerce. *Champlin Refining Co.* v. *Corporation Commission of Oklahoma*, 286 U.S. 210, 235. See also *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55, 77.[14] State measures regulating the production and use of natural gas had also been upheld by this Court against attacks based on the Fourteenth Amendment. *Ohio Oil Company* v. *Indiana (No. 1)*, 177 U.S. 190; *Walls* v. *Midland Carbon Co.*, 254 U.S. 300; *Bandini Petroleum Co.* v. *Superior Court, Los Angeles County, Calif.*, 284 U.S. 8; *Henderson Co.* v. *Thompson*, 300 U.S. 258. In these cases the Court recognized the special interest of the states in natural gas as an exhaustible natural resource and the "essentially local character" of its regulation. At the time the Natural Gas Act was passed it was recognized that the validity of state regulation under the Commerce Clause as well as under the Fourteenth Amendment depended in large part on the nature of the local interest which the state was seeking to protect. For

---

[14] In the Thompson case, the Court in speaking of the state's power to impose proration cited the Champlin case and said (300 U.S at 77):

> "And the fact that plaintiffs' gas is to be sold in interstate commerce would not preclude such exercise of the state's power."

that reason the decisions under the Fourteenth Amendment are relevant in any consideration of the scope of state power under the Commerce Clause as it existed prior to the passage of the Act. Compare *South Carolina State Highway Commission* v. *Barnwell Brothers, Inc.*, 303 U.S. 177, 190, and cases cited. As early as 1896 this Court had recognized the special interest of the states in conserving exhaustible natural resources when it upheld, against attacks based on the Commerce Clause, state regulation of traffic in wild game. See *Geer* v. *Connecticut*, 161 U.S. 519; *New York ex rel. Silz* v. *Hesterberg*, 211 U.S. 31.

The decisions in *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83, and *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298, which were cited in the Committee Reports as marking the limits of the gap that Congress intended to fill, did not relate to the validity of state minimum price regulation for conservation purposes. Indeed the regulation involved in these cases was not conservation regulation in any sense. In both cases the state regulation was designed to protect the economic interests of particular groups of citizens of the state and in both cases the state had attempted to protect that economic interest by the direct regulation of interstate commerce. The decision in the *Kansas Natural Gas Co.* case held invalid an attempt by a consuming state to regulate a sale for resale made by an interstate transmission company of gas brought by it into the state from other states—a typical city-gate transaction now regulated by the Power Commission. In the *Attleboro* case the regulation involved was attempted by the producing state but the commodity involved was mechanically produced electric power and not an exhaustible natural resource so that no problem of conservation

was involved. The local interest asserted by the producing state was not an interest in the conservation of its own exhaustible natural resources but rather an interest in fixing the price on a sale made at the border of the state for the purpose of protecting the economic interests of consumers of electric power within the state.

It thus appears that if state power is viewed in terms of the constitutional principles that were current in 1936 and 1937 there is no basis for asserting that at that time the states lacked power to impose minimum price regulation on the production of natural gas in the interests of conservation even though the gas was destined for sale in interstate commerce. But even if it should be assumed that in 1936 and 1937 the existence of such power was doubtful, that assumption would be irrelevant in determining what effect the Natural Gas Act has on the scope of the conservation powers that the states possess today. The regulatory power with which Congress was concerned when it enacted the Natural Gas Act was the power to impose public utility regulation on rates for the purpose of protecting consumers. The gap in regulatory authority that it intended to close was a gap in the authority to impose public utility regulation and the field that it intended to occupy was the field of public utility regulation. It follows that the only power of the states that should be viewed in terms of its status in 1936 and 1937 is the power of the states to impose public utility regulation. Consideration of that power as it existed in 1936 and 1937 is relevant for only two purposes: first to determine the scope of the authority of the Federal Power Commission to impose utility rate regulation and second to determine what authority the

statute left in the states to impose utility rate regulation.

It would be improper therefore to measure the conservation powers of the state today by reference to constitutional doctrines that were prevalent when the Natural Gas Act was passed. To do so would be to assume that Congress intended to fill with federal power a supposed gap in the constitutional power of the states to regulate for conservation purposes in the same way that it intended to fill with federal power a specific gap in the constitutional power of the states to impose public utility rate regulation on natural gas companies. Both the face of the Act and its legislative history belie this assumption.

There is no merit in appellant's argument that *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, holds that a state has no authority to regulate production in the interests of conservation by fixing minimum prices for gas that is destined to move in interstate commerce. That question was not before the Court in that case. The question there presented was whether the Federal Power Commission was authorized by the Natural Gas Act to impose utility rate regulation on sales of natural gas made into an interstate transmission line after gathering and processing. So far as concerns any discussion of the constitutional power of the states the Court's opinion is directed to the question of the power of the states at the time of the passage of the Act to impose similar utility rate regulation on sales in interstate commerce for resale.

The opinion in the *Phillips* case does not hold that the *Cities Service* case was wrongly decided nor does it suggest that the existence of jurisdiction to impose utility rate regulation possessed by the Federal Power

Commission necessarily deprives the states of the power to exercise the regulatory authority for conservation purposes which the *Cities Service* case held they possessed. The Court in speaking of the *Cities Service* case described it as upholding "state *minimum* price orders justified as conservation measures applying to sales of natural gas in interstate commerce." (347 U.S. at 684). By thus emphasizing the word "minimum" and by referring to the conservation character of the regulation the Court appears to have recognized the essential difference between the kind of conservation regulation involved in this case and in the *Cities Service* case and the maximum rate public utility regulation authorized by the Natural Gas Act that was involved in the *Phillips* case. The *Phillips* decision, therefore, although authoritative in establishing federal authority to impose the one kind of regulation is not an authority for the proposition that the states lack authority to impose the other.

CONCLUSION

The order which is attacked here is a regulation on the taking of gas from the Guymon-Hugoton Field. It is a regulation promulgated by the State of Oklahoma for the purpose of the prevention of waste of an exhaustible natural resource and it is imposed upon the physical act of production. Its fundamental constitutional validity is not open to question. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 172. The formula applicable to a producer such as Panoma delivering gas not at the wellhead but at the conclusion of gathering and after extraction of liquid hydrocarbons is an appropriate and reasonable means of achieving the order's lawful purpose. On the facts as found by the Corporation Commission and affirmed

by the Supreme Court of Oklahoma, invalidation of the order would make nugatory and futile the power of the state to impose minimum price regulation on the production of natural gas. That result would conflict with the constitutional doctrines traditionally controlling federal-state relationships. It would also conflict with the intent of Congress as that intent is reflected in the legislative history of the Natural Gas Act; at the very least Congress intended state conservation measures to stand until there occurs a clear and present conflict between existing federal and state orders.

For all of the foregoing reasons the judgment of the Supreme Court of Oklahoma should be affirmed.

Respectfully submitted,

MAC Q. WILLIAMSON,
Attorney General of Oklahoma

FLOYD GREEN,
T. MURRAY ROBINSON,
HUGH B. COX,
BURKE MARSHALL,
RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
KENNETH HEADY,
Attorneys for Appellees.

APPENDIX A

PERTINENT PROVISIONS OF NATURAL GAS ACT

NATURAL GAS ACT OF JUNE 21, 1938, 52 STAT. 821-833; AS AMENDED MARCH 27, 1954, 68 STAT. 36

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [52 Stat. 821 (1938); 15 U. S. C. § 717 (1946)]

(c) The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this Act by this subsection are hereby declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and in exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction. [68 Stat. 36 (1954)]

APPENDIX B

PERTINENT PROVISIONS OF OKLAHOMA STATUTES AND ORDER NO. 26,096

The Natural Gas Act of 1913, Title 52, O.S.A., Sections 231 to 233, inclusive, read as follows:

Section 231:

> "All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state." (Laws 1913, Ch. 198, p. 439, Sec. 1).

Section 232:

> "Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well." (Laws 1913, Ch. 198, p. 440, Sec. 2).

Section 233:

> "Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said

gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree to such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas." (Laws 1913, Ch. 198, p. 440, Sec. 3).

The 1915 Ratable Taking Act, Title 52, O.S.A., Sections 239, 240 and 243, read as follows:

Section 239:

"Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another." (Laws 1915, Ch. 197, Sec. 4).

Section 240:

"Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser

thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all of the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade." (Laws 1915, Ch. 197, Sec. 5).

Section 243:

"The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this Act." (Laws 1915, Ch. 197, Sec. 8).

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

Order No. 26096

In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an order determining the minimum price at which gas produced from the Guymon-Hugoton Field may be first purchased or sold.

* * * *

ORDER

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic feet of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic foot.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

Done and performed by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29 day of July, 1952.

Corporation Commission of Oklahoma
(S) Reford Bond, Chairman
Ray O. Weems, Vice-Chairman
Ray C. Jones, Commissioner.

Attest: (S) Tom McMurray, Secretary